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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED DECEMBER 15, 1939.

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VOL. II

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EXHIBIT C

The Travelers Hartford, Connecticut

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY UB

The Travelers Insurance Company,

Hartford, Connecticut,

(HEREIN CALLED THE COMPANY)

Does Hereby Agree *with this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:*

One (a) **To Pay Promptly** to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all instalments thereof as they become due,

(1) *To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and*

(2) *For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.*

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

One (b) **To Indemnify** this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Company under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy.

Two **To Serve** this Employer (a) by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and, (b) upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law.

Three **To Defend**, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

Four **To Pay** all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

Five **This agreement shall apply** to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation. The remuneration of any such designated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

Six **This agreement shall apply** to such injuries so sustained by reason of the business operations described in said Declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

Seven **This agreement shall apply only** to such injuries so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

(For Conditions see Second Page)

This space is intended for the attachment of such endorsements as may be executed as in the Policy provided, and, when so executed and attached, they are to be construed as a part of the Policy.

178044 Ed. July 1933

Specimen

This [illegible]reement is subject to the follo[illegible]g Conditions:

A. The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above defined are undertaken by this Employer but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with **Condition C** hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in **Condition C** hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This Policy may be canceled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancelation shall be effective. The effective date of such cancelation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancelation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancelation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancelation determined as herein provided. If such cancelation is at the Company's request, the earned premium shall be adjusted *pro rata* as provided in **Condition A**. If such cancelation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer, when requesting cancelation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted *pro rata*. Notice of cancelation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

C. The Company shall be permitted, at all reasonable times, if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this Employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

E. As between the employee and the Company, notice to or knowledge of this Employer of an injury or death covered hereby shall be notice or knowledge, as the case may be, of the Company; the jurisdiction of this Employer, for the purposes of any Workmen's Compensation Law covered hereby, shall be jurisdiction of the Company and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

G. No action shall lie against the Company to recover upon any claim or for any loss under **Paragraph One** (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancelation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment, to all rights

premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This Policy may be canceled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancelation shall be effective. The effective date of such cancelation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancelation shall be given to any Board, Commission or other state agency is hereby made a part of this Policy and cancelation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancelation determined as herein provided. If such cancelation is at the Company's request, the earned premium shall be adjusted *pro rata* as provided in **Condition A**. If such cancelation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer, when requesting cancelation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted *pro rata*. Notice of cancelation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

C. The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this Employer while this Policy was in force.

D. The obligations of **Paragraph One** (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured employee covered hereby, or, in the event of his death, to his dependents; and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as

give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

G. No action shall lie against the Company to recover upon any claim or for any loss under **Paragraph One** (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancelation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer, or in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates.

L. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President, a Vice-President, Secretary, or Assistant Secretary of the Company, or by a Registrar of the Company when specially authorized so to do by a printed endorsement attached hereto; nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any other person, be held to effect a waiver or change in any part of this contract. Changes in the written portion of the Declarations forming part hereof (except **Items 2, 3 and 4**) may be made by the agent countersigning this Policy, such changes to bind the Company when initialed by such agent. The personal pronoun herein used to refer to this Employer or to an injured employee or dependents, shall apply regardless of number or gender.

M. The statements in **Items 1** to **7** inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This Policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

In Witness Whereof, The Travelers Insurance Company has caused this Policy to be signed by its President and a Secretary at Hartford, Connecticut, and countersigned by a duly authorized agent of the Company.

Specimen Contract **Specimen Contract**

Countersigned by _____

27806a Ed. July 1933

706a-1

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For Attachment to

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY when applicable in the STATE OF VIRGINIA to complete the contract as provided in the policy

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1. The obligations of **Paragraph One (a)** of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other.

Chapter 400, Laws of 1918, State of Virginia, entitled "The Virginia Workmen's Compensation Act"

and all laws amendatory thereof or supplementary thereto which may be or become effective while this Policy is in force.

2. The provisions of Section 20-a of the above cited Act are hereby made a part of this endorsement as fully and completely as if wholly written herein. If this Employer is an owner, contractor or intermediate contractor, as defined in said Section, the Company hereby accepts and includes in this Policy the obligations of this Employer for compensation or other benefits imposed by such Section which are due to his disclosed business operations. This Employer agrees to report or cause to be reported to the Company the remuneration earned by the employees of any such sub-contractor or intermediate contractor, which remuneration shall be subject to adjustment and premium charge in the same manner and under the same conditions as the remuneration of the direct employees of this Employer. If, however, any such sub-contractor or intermediate contractor shall secure the payment of compensation to his immediate employees in accordance with the provisions of the above cited Act and maintain the same during the performance of the sub-contracted work with acceptable proof thereof to the Company, the remuneration of employees so secured shall not be reported to the Company.

3. If this Employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary, Treasurer and other executive officers elected or appointed in accordance with the charter and by-laws of such corporation shall be disclosed and premium shall be paid thereon, subject to a minimum individual remuneration of $30 per week, if the actual remuneration is less than such amount, and to a maximum individual remuneration of $100 per week, if the actual remuneration is greater than such amount. The remuneration so determined of each executive shall be assigned without division to the classification which is applicable to the actual operations in which such executive officer is primarily engaged, provided the remuneration so determined of each executive officer who performs such duties as are ordinarily undertaken by a superintendent, foreman or workman, or whose duties include direct charge of the actual performance of any operations of this Employer, shall be assigned without division to the highest rated classification which is applicable to any such duties undertaken by such executive officer for any part of his time.

4. The Company's liability under **Paragraph One (b)** shall be limited to $25,000 as the result of one or more claims arising from a single accident.

5. It is agreed that the Policy of which this endorsement forms a part does not afford insurance under **Paragraph One (b)** with respect to occupational disease, and that the provisions of **Paragraphs Two, Three and Four** shall not apply with respect to occupational disease for which no insurance is afforded under **Paragraph One (b)**.

6. This Policy is issued by the Company and accepted by this Employer with the agreement that rates of premium are subject to changes to the extent that such changes are approved or required by the State Corporation Commission of Virginia in accordance with the law by reason of (1) any change in the benefit provisions of the above cited Compensation Law which becomes effective during the Policy Period, or (2) any revision of manual rates which becomes effective and applicable during the Policy Period, or (3) the promulgation of adjusted rates by the Workmen's Compensation Inspection Rating Bureau of Virginia in accordance with the rating plans approved by the State Corporation Commission of Virginia. Such changes shall become applicable from and after the date required by the State Corporation Commission of Virginia. The provisions of this paragraph apply to rates expressed in the Policy or any endorsement attached thereto. Such changes, if any, are to be expressed by further endorsement naming the effective date thereof.

THE TRAVELERS INSURANCE COMPANY

45-1788
Virginia

Countersigned by_____
Authorized Representative

L. E. Zacher
President

C-608 6-12-39
PRINTED IN U.S.A.

706a-2

2. The provisions of Section 20-a of the above cited Act are hereby made a part of this endorsement as fully and completely as if wholly written herein. If this Employer is an owner, contractor or intermediate contractor, as defined in said Section, the Company hereby accepts and includes in this Policy the obligations of this Employer for compensation or other benefits imposed by such Section which are due to his disclosed business operations. This Employer agrees to report or cause to be reported to the Company the remuneration earned by the employees of any such sub-contractor or intermediate contractor, which remuneration shall be subject to adjustment and premium charge in the same manner and under the same conditions as the remuneration of the direct employees of this Employer. If, however, any such sub-contractor or intermediate contractor shall secure the payment of compensation to his immediate employees in accordance with the provisions of the above cited Act and maintain the same during the performance of the sub-contracted work with acceptable proof thereof to the Company, the remuneration of employees so secured shall not be reported to the Company.

3. If this Employer is a corporation, the entire remuneration of the President, any Vice-President, Secretary, Treasurer and other executive officers elected or appointed in accordance with the charter and by-laws of such corporation shall be disclosed and premium shall be paid thereon, subject to a minimum individual remuneration of $30 per week, if the actual remuneration is less than such amount, and to a maximum individual remuneration of $100 per week, if the actual remuneration is greater than such amount. The remuneration so determined of each executive shall be assigned without division to the classification which is applicable to the actual operations in which such executive officer is primarily engaged, provided the remuneration so determined of each executive officer who performs such duties as are ordinarily undertaken by a superintendent, foreman or workman, or whose duties include direct charge of the actual performance of any operations of this Employer, shall be assigned without division to the highest rated classification which is applicable to any such duties undertaken by such executive officer for any part of his time.

4. The Company's liability under **Paragraph One (b)** shall be limited to $25,000 as the result of one or more claims arising from a single accident.

5. It is agreed that the Policy of which this endorsement forms a part does not afford insurance under **Paragraph One (b)** with respect to occupational disease, and that the provisions of **Paragraphs Two, Three and Four** shall not apply with respect to occupational disease for which no insurance is afforded under **Paragraph One (b)**.

6. This Policy is issued by the Company and accepted by this Employer with the agreement that rates of premium are subject to changes to the extent that such changes are approved or required by the State Corporation Commission of Virginia in accordance with the law by reason of (1) any change in the benefit provisions of the above cited Compensation Law which becomes effective during the Policy Period, or (2) any revision of manual rates which becomes effective and applicable during the Policy Period, or (3) the promulgation of adjusted rates by the Workmen's Compensation Inspection Rating Bureau of Virginia in accordance with the rating plans approved by the State Corporation Commission of Virginia. Such changes shall become applicable from and after the date required by the State Corporation Commission of Virginia. The provisions of this paragraph apply to rates expressed in the Policy or any endorsement attached thereto. Such changes, if any, are to be expressed by further endorsement naming the effective date thereof.

THE TRAVELERS INSURANCE COMPANY

45-1788
Virginia
C-608 6-12-39
PRINTED IN U.S.A.

Countersigned by_____
Authorized Representative

L. S. Gaches
President

706a-2

NUMBER	BRANCH / PRODUCER	ADDRESS (TOWN AND STATE)	COUNTY	STATE	FILING REQUIREMENTS / COUNTERSIGNED	DATE OF ISSUE / CLASSIFICATION / PREMIUM
UB						

Edition July 1939	RENEWAL	BR. OFFICE APPROVAL	UNDERWRITER CHECKED	ENDORSEMENTS	POLICY: WRITER / CHECKER	EXPIRATION: WRITER / CHECKER
Standard Workmen's Compensation and Employer's Liability Proposal and Declarations	HISTORY NO.	CORRESPONDENCE Yes — No	UNDERWRITER APPROVAL	1788	MAK /	/
					SUMMARY REG.	INSPECTION

Item 1. Name of this Employer Blank Products Inc.

P. O. Address 535-611 Blank Ave., Dover, Tuscarawas County, Ohio

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.
Individual, co-partnership, corporation or estate? Corporation

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from Feb. 15, 1939 to Feb. 15, 1940
at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number. 333 Blank Ave., Richmond, Virginia and elsewhere in the State of Virginia

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following Divisions as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium	
1 See Below					
2 (a) Clerical Office Employees	8810				
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742				
(b) Drivers and their Helpers, including stablemen—if not specifically included in Division 1	7205				
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in Division 1 #45	7380	1,500.	1.12		
Minimum Premium for this Policy shall be $ 19.00		Estimated Advance Premium		Minimum 19.00	

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a

elsewhere in the State Virginia

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS	Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1 See Below			
2 (a) Clerical Office Employees 8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise 8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in Division 1 7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in Division 1 #45 7380	1,500.	1.12	
Minimum Premium for this Policy shall be $ 19.00	**Estimated Advance Premium** Minimum		19.00

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

Item 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—*except as herein stated:* No Exceptions

Item 6. No similar insurance has been canceled by any insurance carrier during the past year—*except as herein stated:* No Exceptions

Item 7. The following signature is authorized and accepted by this Employer as his signature.

Proposal dated _____ Per Blank Products Inc.

Name _____

No. UB _____

Exp. Date _____

27807A Ed. July 1933 PRINTED IN U.S.A.

The Travelers Insurance Company.

Hartford, Connecticut

PROPOSAL FOR STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY

BY

INSTRUCTIONS

This space is to be used as necessary to give: statements of unusual hazards or operations; accessibility of isolated risks; brokerage or local agency situations; names of recent past insurance carriers when new risks are involved; available information respecting past experience record of new risks; any other information which may be of importance in considering the desirability of a risk. The space will be of use primarily in connection with new business.

Declarations.

Number

UB_____

Item 1. Name of this Employer

P. O. Address

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served. Individual, co-partnership, corporation or estate?

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from , to , at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS NOTE: If more than one classification indicate each other by (b), (c), (d), etc.		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1				
2 (a) Clerical Office Employees	8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise	8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in **Division 1**	7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in **Division 1**	7380			
Minimum Premium for this Policy shall be $		**Estimated Advance Premium**		

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium [illegible]

individual, co-partnership, corporation or estate?

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from to at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following **Divisions** as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 Operations not on the premises.

CLASSIFICATION OF OPERATIONS NOTE: If more than one classification indicate each other by (b), (c), (d), etc.		Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1				
2 (a) Clerical Office Employees	8810			
3 (a) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise .	8742			
(b) Drivers and their Helpers, including stablemen—if not specifically included in **Division 1**	7205			
(c) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in **Division 1**	7380			

Minimum Premium for this Policy shall be $ **Estimated Advance Premium**

Item 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

Item 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—*except as herein stated:*

Item 6. No similar insurance has been canceled by any insurance carrier during the past year—*except as herein stated:*

Item 7. The following signature is authorized and accepted by this Employer as his signature.

(Copy of Signature to Proposal)

Proposal dated . Per

27806A Ed. July 1933 PRINTED IN U.S.A.

The Travelers

The Travelers Insurance Company,

Hartford, Connecticut

STANDARD WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY POLICY

No. UB

Issued to

Expires

At twelve and one minute o'clock A. M.

Specimen Contract

27806A Ed. July 1933 PRINTED IN U.S.A.

The Travelers

Short Rate Cancelation Table

For Term of One Year

		Per Cent. of Annual Premium
1 day		2
2 days		4
3 "		5
4 "		6
5 "		7
6 "		8
7 "		9
8 "		9
9 "		10
10 "		10
11 "		11
12 "		12
13 "		13
14 "		13
15 "		14
16 "		14
17 "		15
18 "		16
19 "		16
20 "		17
25 "		19
30 "		20
35 "		23
40 "		26
45 "		27
50 "		28
55 "		29
60 "		30
65 "		33
70 "		36
75 "		37
80 "		38
85 "		39
90 "	or three months	40
105 "		45
120 "	or four months	50
135 "		55
150 "	or five months	60
165 "		65
180 "	or six months	70
195 "		73
210 "	or seven months	75
225 "		78
240 "	or eight months	80
255 "		83
270 "	or nine months	85
285 "		88
300 "	or ten months	90
315 "		93
330 "	or eleven months	95
360 "	or twelve months	100

FOR VALUE RECEIVED the interest of this Employer in this Policy is hereby assigned to subject to the consent of THE TRAVELERS INSURANCE COMPANY.

, 19

[SIGNATURE OF EMPLOYER]

Hartford, Conn., 19

THE TRAVELERS INSURANCE COMPANY

Short Rate Cancelation Table

For Term of One Year

	Per Cent. of Annual Premium
1 day	2
2 days	4
3	5
4	6
5	7
6	8
7	9
8	10
9	10
10	11
11	12
12	13
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35	60
36	65
37	70
38	73
39	75
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41	80
42	83
43	85
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353	100
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358	100
359	100
360	100

1 day
2 days
or three months
or four months
or five months
or six months
or seven months
or eight months
or nine months
or ten months
or eleven months
or twelve months

_____, 19____

FOR VALUE RECEIVED the interest of this Employer in this Policy is hereby assigned to

_____

subject to the consent of THE TRAVELERS INSURANCE COMPANY.

_____

[SIGNATURE OF EMPLOYER]

_____

Hartford, Conn., _____, 19 ____

THE TRAVELERS INSURANCE COMPANY hereby consents that the interest of this Employer in this Policy be assigned to _____

of _____

[POST OFFICE ADDRESS OF ASSIGNEE]

_____

Secretary.

706a-6

501

The Travelers Hartford, Connecticut

The Travelers Indemnity Company,
Hartford, Connecticut,

A STOCK COMPANY

(HEREIN CALLED THE COMPANY)

INSURING AGREEMENT

In consideration of $.....premium does hereby agree with

.....

(herein called the Assured)

whose address is.....

respecting loss (.....loss of the kind described in Section II, and.....loss of the kind described in Section IV) from an accident as herein defined to an object described herein, occurring during the policy period which is from.....to.....,

at twelve o'clock noon, standard time, as to each of said dates, at the place where such accident occurs, subject to a Limit per Accident of.....Dollars ($.....),

as follows:

SECTION I To PAY the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Company so elects, to repair or replace such damaged property), excluding (*a*) loss from fire (or from the use of water or other means to extinguish fire), (*b*) loss from an accident caused by fire, (*c*) loss from delay or interruption of business or manufacturing or process, (*d*) loss from lack of power, light, heat, steam or refrigeration, and (*e*) loss from any indirect result of an accident;

SECTION II To PAY the Assured, if loss under Section II is stated above as included but not otherwise, for the extra cost represented by items of expense for temporary repair or for expediting the repair of such damaged property of the Assured including overtime and the extra cost of express or other rapid means of transporting materials, but if the Company's payment under Section I is $1,000 or less the Company's liability under Section II shall not exceed an amount equal to said payment under Section I, and if said payment under Section I exceeds $1,000, the Company's liability under Section II shall not exceed $1,000 plus 25% of the amount by which the Company's payment under Section I exceeds $1,000; and the Company's liability under Section II shall be a part of and not in addition to the Limit per Accident;

SECTION III To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; to DEFEND the Assured against any claim or suit alleging such damage unless or until the Company shall elect to effect settlement thereof;

SECTION IV To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I, II and III, if loss under Section IV is stated above as included but not otherwise, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured, including liability for loss of services, on account of bodily injuries (including death at any time resulting therefrom) sustained by any person and caused by such accident, except that the indemnity hereunder shall in no event apply to any liability or obligation under any workmen's compensation law; to PAY, if loss under Section IV is stated above as included but not otherwise, irrespective of the Limit per Accident, for such immediate surgical relief as shall be rendered at the time of the accident; to DEFEND the Assured, if loss under Section IV is stated above as included but not otherwise, against any claim or suit alleging such liability unless or until the Company shall elect to effect settlement thereof; and

SECTION V To PAY, irrespective of the Limit per Accident, all costs taxed against the Assured in any legal proceeding defended by the Company in accordance with Section III or IV, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premium charges on attachment or appeal bonds required in such legal proceedings, and all expenses incurred by the Company for such defense;

PROVIDED the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule.

It is PROVIDED FURTHER that this agreement is subject to the Conditions printed hereon and subject also to the Schedules and endorsements issued to form a part hereof. The Schedules and endorsements attached

Specimen Contract

The Travelers Indemnity Company, Hartford, Connecticut

Policy No.

ISSUED TO

expires 19

The Travelers I-319 Ed. January 1940 PRINTED IN U.S.A.

Insurance Form Policy for Boiler or Machinery Insurance Copyright 1939 by J. P. H. deWindt

respecting loss.....loss of the kind described in Section II, and.....loss of the kind described in Section IV) from an accident as herein defined to an object described herein, occurring during the policy period which is from.....to.....,
at twelve o'clock noon, standard time, as to each of said dates, at the place where such accident occurs, subject to a Limit per Accident of.....Dollars ($.....),
as follows:

SECTION I — To PAY the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Company so elects, to repair or replace such damaged property), excluding (*a*) loss from fire (or from the use of water or other means to extinguish fire), (*b*) loss from an accident caused by fire, (*c*) loss from delay or interruption of business or manufacturing or process, (*d*) loss from lack of power, light, heat, steam or refrigeration, and (*e*) loss from any indirect result of an accident;

SECTION II — To PAY the Assured, if loss under Section II is stated above as included but not otherwise, for the extra cost represented by items of expense for temporary repair or for expediting the repair of such damaged property of the Assured including overtime and the extra cost of express or other rapid means of transporting materials, but if the Company's payment under Section I is $1,000 or less the Company's liability under Section II shall not exceed an amount equal to said payment under Section I, and if said payment under Section I exceeds $1,000, the Company's liability under Section II shall not exceed $1,000 plus 25% of the amount by which the Company's payment under Section I exceeds $1,000; and the Company's liability under Section II shall be a part of and not in addition to the Limit per Accident;

SECTION III — To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; to DEFEND the Assured against any claim or suit alleging such damage unless or until the Company shall elect to effect settlement thereof;

SECTION IV — To PAY, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I, II and III, if loss under Section IV is stated above as included but not otherwise, such amounts as the Assured shall become obligated to pay by reason of the liability of the Assured, including liability for loss of services, on account of bodily injuries (including death at any time resulting therefrom) sustained by any person and caused by such accident, except that the indemnity hereunder shall in no event apply to any liability or obligation under any workmen's compensation law; to PAY, if loss under Section IV is stated above as included but not otherwise, irrespective of the Limit per Accident, for such immediate surgical relief as shall be rendered at the time of the accident; to DEFEND the Assured, if loss under Section IV is stated above as included but not otherwise, against any claim or suit alleging such liability unless or until the Company shall elect to effect settlement thereof; and

SECTION V — To PAY, irrespective of the Limit per Accident, all costs taxed against the Assured in any legal proceeding defended by the Company in accordance with Section III or IV, all interest accruing after entry of judgment rendered in connection therewith up to the date of payment by the Company of its share of such judgment, all premium charges on attachment or appeal bonds required in such legal proceedings, and all expenses incurred by the Company for such defense;

PROVIDED the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule.

It is PROVIDED FURTHER that this agreement is subject to the Conditions printed hereon and subject also to the Schedules and endorsements issued to form a part hereof. The Schedules and endorsements attached to this policy when it is issued are identified as follows:

Schedule(s) numbered.....Endorsement(s) numbered.....

In Witness Whereof, The Travelers Indemnity Company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut, and countersigned by a duly authorized representative of the Company.

Specimen Contract **Specimen Contract**

Countersigned by.....
Authorized Representative

1-618 Rd. January 1930 706 B 706-b

The Travelers Indemnity Company, Hartford, Connecticut

Conference Form Policy for Boiler or Machinery Insurance—Copyright 1930 by J. P. H. deWindt

CONDITIONS

LIMIT PER ACCIDENT

1. The Company's total liability for loss from any one accident shall not exceed the amount stated as Limit per Accident. The term "one accident" shall be taken as including all resultant or concomitant accidents whether to one or more than one object or part of an object.

BODILY INJURIES

2. If at the time of an accident there is in effect any other contract or provision requiring any insurance company or any association or individual, or body politic or corporate, to pay the Assured or in his behalf or stead, for loss of a kind described in Section IV caused by the accident, the insurance, if any, under Section IV shall not be considered as contributing insurance and shall become effective and applicable only on any part of said loss of the Assured for which there is not then in effect such other valid and collectible insurance. If at such time there is not in effect any such other contract or provision with respect to such loss then the insurance, if any, under Section IV may be applied to any part of said loss.

OTHER PROPERTY INSURANCE

3. In the event of a property loss to which both this insurance and other insurance carried by the Assured apply, herein referred to as "joint loss", (*a*) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the whole amount of such other valid and collectible insurance; or, (*b*) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said loss had there been no insurance under this policy; but this clause (*b*) shall apply only in case the policies affording such other insurance contain a similar clause.

LIMITATION OF PROPERTY LOSS

4. The Company shall not be liable as respects the property of the Assured damaged or destroyed, for more than the actual cash value thereof at the time of the accident. If as respects the damaged property of the Assured the repair or replacement of any part or parts of an object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

INSPECTIONS AND SUSPENSION

5. The Company shall be permitted at all reasonable times during the policy period to inspect the objects and the premises where the objects are located. Upon the discovery of a dangerous condition with respect to any object, any representative of the Company may immediately suspend the insurance thereon by written notice mailed or delivered to the Assured at the address of the Assured, as stated herein, or at the location, as stated in the Schedule, of the object to which the suspension applies. Insurance so suspended may be reinstated by the Company but only by endorsement issued to form a part hereof. The Assured shall be allowed the unearned premium paid for such object, pro rata, for the period of such suspension.

CANCELATION

6. This policy may be canceled by the Assured by mailing written notice to the Company stating when thereafter such cancelation shall be effective, in which case the Company shall refund the excess of premium paid by the Assured above the short rate premium computed in accordance with the Short Rate Cancelation Table printed hereon. This policy may be canceled by the Company by mailing written notice to the Assured at the address of the Assured, as stated herein, stating when, not less than five days thereafter, such cancelation shall be effective, and the Company shall refund the excess of premium paid by the Assured above the pro rata premium for the expired term. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing and whether such notice shall be mailed or delivered the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Cancelation shall not affect any claim for loss from an accident occurring prior to the effective date and hour of cancelation.

NOTICE OF ACCIDENT AND ADJUSTMENT

7. The Company shall not be liable for loss from an accident unless written notice thereof is given by or on behalf of the Assured or claimant to the Company or to any of its authorized agents, as soon as practicable. The Assured shall give like notice of any claim made on account of such accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Assured before repairs are undertaken or physical evidence of the accident is removed, except for protection or salvage. Proof of loss shall be made by the Assured in such form and detail as the Company may require. The Assured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company. In event of disagreement between the Company and the Assured as to the amount of loss on the property of the Assured for which the Company is liable under this policy, the amount of said loss may be determined, if the Assured so elects, by two competent and disinterested persons as appraisers, one to be chosen by the Assured and one to be chosen by the Company within thirty days of the demand of the Assured. The two appraisers shall select a third person as umpire to decide upon items upon which the two appraisers may disagree and, failing for fifteen days to agree upon such umpire, then on request of the Assured such umpire shall be selected by a judge of a court of record in the county and state in which the arbitration is pending. The award in writing of any two of the three said persons shall determine the amount of said loss. The Assured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and the expense of appraisal. The Assured shall not voluntarily assume any liability, make any payment or incur any expense, other than at the Assured's own cost except as otherwise expressly permitted herein, or interfere in any negotiation for settlement or in any legal proceeding, without the consent of the Company previously given in writing, but payment by the Assured of any judicial judgment or claim for any of the indemnity for which the Company would become liable under this policy, shall not bar the Assured's right of action against the Company therefor.

SUBROGATION

8. The Company shall be subrogated in case of payment of loss under this policy, to the extent of such payment, to all of the Assured's rights of recovery therefor and the Assured shall execute all papers required and shall do everything necessary to secure such rights.

SUITS AGAINST ASSURED

9. If a suit is brought against the Assured for loss to which this insurance is applicable, the Assured shall immediately forward to the Company every summons or other process served upon the Assured. The Assured upon request of the Com-

ment of any part or parts of an object is involved, the Company shall not be liable for the cost of such repair or replacement in excess of the actual cash value of said part or parts or in excess of the actual cash value of the object, whichever value is less. Actual cash value in all cases shall be ascertained with proper deductions for depreciation, however caused.

INSPECTIONS AND SUSPENSION

5. The Company shall be permitted at all reasonable times during the policy period to inspect the objects and the premises where the objects are located. Upon the discovery of a dangerous condition with respect to any object, any representative of the Company may immediately suspend the insurance thereon by written notice mailed or delivered to the Assured at the address of the Assured, as stated herein, or at the location, as stated in the Schedule, of the object to which the suspension applies. Insurance so suspended may be reinstated by the Company but only by endorsement issued to form a part hereof. The Assured shall be allowed the unearned premium paid for such object, pro rata, for the period of such suspension.

CANCELATION

6. This policy may be canceled by the Assured by mailing written notice to the Company stating when thereafter such cancelation shall be effective, in which case the Company shall refund the excess of premium paid by the Assured above the short rate premium computed in accordance with the Short Rate Cancelation Table printed hereon. This policy may be canceled by the Company by mailing written notice to the Assured at the address of the Assured, as stated herein; stating when, not less than five days thereafter, such cancelation shall be effective, and the Company shall refund the excess of premium paid by the Assured above the pro rata premium for the expired term. Delivery of such written notice either by the Assured or by the Company shall be equivalent to mailing and whether such notice shall be mailed or delivered the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Cancelation shall not affect any claim for loss from an accident occurring prior to the effective date and hour of cancelation.

NOTICE OF ACCIDENT AND ADJUSTMENT

7. The Company shall not be liable for loss from an accident unless written notice thereof is given by or on behalf of the Assured or claimant to the Company or to any of its authorized agents, as soon as practicable. The Assured shall give like notice of any claim made on account of such accident. The Company shall have reasonable time and opportunity to examine the property and the premises of the Assured before repairs are undertaken or physical evidence of the accident is removed, except for protection or salvage. Proof of loss shall be made by the Assured in such form and detail as the Company may require. The Assured upon request of the Company shall render every assistance in facilitating the investigation and adjustment of any claim, submitting to examination and interrogation by any representative of the Company. In event of disagreement between the Company and the Assured as to the amount of loss on the property of the Assured for which the Company is liable under this policy, the amount of said loss may be determined, if the Assured so elects, by two competent and disinterested persons as appraisers, one to be chosen by the Assured and one to be chosen by the Company within thirty days of the demand of the Assured. The two appraisers shall select a third person as umpire to decide upon items upon which the two appraisers may disagree and, failing for fifteen days to agree upon such umpire, then on request of the Assured such umpire shall be selected by a judge of a court of record in the county and state in which the arbitration is pending. The award in writing of any two of the three said persons shall determine the amount of said loss. The Assured and the Company shall pay the appraisers respectively chosen by each and shall share and pay equally for the umpire and the expense of appraisal. The Assured shall not voluntarily assume any liability, make any payment or incur any expense, other than at the Assured's own cost except as otherwise expressly permitted herein, or interfere in any negotiation for settlement or in any legal proceeding, without the consent of the Company previously given in writing, but payment by the Assured of any judicial judgment or claim for any of the indemnity for which the Company would become liable under this policy, shall not bar the Assured's right of action against the Company therefor.

SUBROGATION

8. The Company shall be subrogated in case of payment of loss under this policy, to the extent of such payment, to all of the Assured's rights of recovery therefor and the Assured shall execute all papers required and shall do everything necessary to secure such rights.

SUITS AGAINST ASSURED

9. If a suit is brought against the Assured for loss to which this insurance is applicable, the Assured shall immediately forward to the Company every summons or other process served upon the Assured. The Assured upon request of the Company shall aid in effecting settlements, in securing evidence and the attendance of witnesses, and in prosecuting appeals.

SUITS AGAINST COMPANY

10. Suit shall not be brought under this policy unless commenced within fourteen months from the date upon which the accident occurred, except that an action for indemnity payable hereunder as the result of a suit against the Assured may be brought within two years after the termination of such suit; provided that where such limitation of time is prohibited by the laws of the state wherein the loss occurs, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation of time permitted under the laws of that state for such an action.

INSOLVENCY OF ASSURED

11. To the extent only that any indemnity under this policy becomes finally applicable to loss of the Assured from the liability of the Assured to a third person, the bankruptcy or insolvency of the Assured or his estate shall not relieve the Company of any of its obligations hereunder; and if said person or his legal representative shall obtain final judgment against the Assured or his legal representative because of an accident, then such person or his legal representative may proceed against the Company to recover to said extent on the amount of such judgment, either at law or in equity.

CHANGES

12. By acceptance of this policy the Assured agrees that it embodies all agreements existing between the Assured and the Company or any of its agents relating to this insurance. No provision or condition of this policy shall be waived or altered except by endorsement issued to form a part hereof, signed by the President, a Vice-President, the Secretary, or an Assistant Secretary of the Company. The additional or return premium for any such endorsement shall be computed in accordance with the Adjustment Table printed hereon. Notice to any agent, or knowledge possessed by any agent or by any other person, shall not be held to effect a waiver or change in any part of this policy; but changes in the typewritten portions of this policy, if initialed by any Manager, Assistant Manager or General Agent of the Company, shall bind the Company and the Assured. This policy shall be void if it is assigned without the written consent of the Company, but if the death, insolvency or bankruptcy of the Assured shall occur during the policy period, the Assured under this policy, during the remaining unexpired

portion of such period shall be the legal representative of the Assured, provided written notice shall be given to the Company within thirty days after the date of such death, insolvency or bankruptcy.

SCHEDULES

13. The insurance hereunder shall apply only to loss from an accident to the object or objects designated and described in a Schedule or Schedules issued to form a part hereof, bearing the signature of the President of the Company. Such Schedule or Schedules which contain the description of such object or objects, the definition thereof and the definition of accident and other provisions as applicable to the respective objects described in each such Schedule, shall be considered as incorporated in this policy.

This space is for the attachment of the Schedule or Schedules, and endorsements if any.

ADJUSTMENT TABLE

To obtain the additional premium or return premium which may be required for an endorsement effecting a change in any provision or condition of this policy, determine from the Adjustment Table the percentage for the unexpired term of the policy and apply that percentage to the premium that would be required for such change for the full term of the policy; except that if an object previously covered by the policy is added to the policy the additional premium required shall be equal to the amount which was allowed as the return premium on said object if the period between the date of elimination and the date upon which it is added to the policy is less than three consecutive whole months. Premium adjustments for modifications involving both increased coverage and reduced coverage must not be computed by applying one percentage to the difference in the full term premiums required; additional premiums and return premiums must be computed separately.

For an endorsement requiring an additional premium

Note: The percentages shown below shall be used only for adding objects and shall be applied to Object Charges; for any other increase in coverage, the percentage shall be determined on a pro rata basis, using the ratio of the number of days in the unexpired term to the total number of days in the policy term.

*Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.8	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27				

For an endorsement allowing a return premium

†Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	7.0%	3.8%	2.6%	2.0%
2	14.1	7.6	5.2	4.0
3	21.3	11.4	7.9	6.0
4	28.4	15.3	10.5	8.0
5	35.4	19.1	13.1	10.0
6	42.4	22.9	15.7	11.9
7	49.7	26.7	18.3	14.0
8	56.8	30.7	21.0	16.0
9	63.8	34.5	23.6	17.9
10	70.8	38.2	26.2	20.0
11	78.1	42.2	28.8	22.0
12	85.1	46.0	31.5	24.0
13		49.8	34.1	25.9
14		53.6	36.7	27.9
15		57.5	39.3	30.0
16		61.3	42.0	31.9
17		65.1	44.6	33.9
18		68.9	47.2	35.9
19		72.8	49.8	37.9
20		76.6	52.5	39.9
21		80.4	55.1	41.9
22		84.2	57.7	43.9
23		88.2	60.4	45.9
24		92.0	63.0	47.9
25			65.6	49.9
26			68.2	51.9

ADJUSTMENT TABLE

To obtain the additional premium or return premium which may be required for an endorsement effecting a change in any provision or condition of this policy, determine from the Adjustment Table the percentage for the unexpired term of the policy and apply that percentage to the premium that would be required for such change for the full term of the policy; except that if an object previously covered by the policy is added to the policy the additional premium required shall be equal to the amount which was allowed as the return premium on said object if the period between the date of elimination and the date upon which it is added to the policy is less than three consecutive whole months. Premium adjustments for modifications involving both increased coverage and reduced coverage must not be computed by applying one percentage to the difference in the full term premiums required; additional premiums and return premiums must be computed separately.

For an endorsement requiring an additional premium

Note: The percentages shown below shall be used only for adding objects and shall be applied to Object Charges; for any other increase in coverage, the percentage shall be determined on a pro rata basis, using the ratio of the number of days in the unexpired term to the total number of days in the policy term.

*Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.6	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27			76.4	58.1
28			79.0	60.1
29			81.7	62.1
30			84.3	64.1
31			86.9	66.1
32			89.5	68.1
33			92.1	70.0
34			94.8	72.1
35			97.4	74.1
36			100.0	76.0
37				78.0
38				80.0
39				82.1
40				84.0
41				86.0
42				88.1
43				90.0
44				92.0
45				94.0
46				96.0
47				98.0
48				100.0

*For adding objects, the number of Months in the Unexpired Term shall be determined by counting from the effective date of the policy modification to the corresponding day of the month in succeeding months to the expiration of the policy, including as a full month any fractional part of a month remaining; except that when an added object is used to replace another object which is eliminated from the policy on the same date, the number of Months shall exclude as a full month any fractional part of a month remaining.

For an endorsement allowing a return premium

†Unexpired Term (Months)	1 Year Policy	2 Year Policy	3 Year Policy	4 Year Policy
1	7.0%	3.8%	2.6%	2.0%
2	14.1	7.6	5.2	4.0
3	21.3	11.4	7.9	6.0
4	28.4	15.3	10.5	8.0
5	35.4	19.1	13.1	10.0
6	42.8	22.9	15.7	11.9
7	49.7	26.7	18.3	14.0
8	56.8	30.7	21.0	16.0
9	63.8	34.5	23.6	17.9
10	70.8	38.2	26.2	20.0
11	78.1	42.2	28.8	22.0
12	85.1	46.0	31.5	24.0
13		49.8	34.1	25.9
14		53.6	36.7	27.9
15		57.5	39.3	30.0
16		61.3	42.0	31.9
17		65.1	44.6	33.9
18		68.9	47.2	35.9
19		72.8	49.8	37.9
20		76.6	52.5	39.9
21		80.4	55.1	41.9
22		84.2	57.7	43.9
23		88.2	60.4	45.9
24		92.0	63.0	47.9
25			65.6	49.9
26			68.2	51.9
27			70.9	53.8
28			73.5	55.9
29			76.1	57.9
30			78.7	59.8
31			81.4	61.8
32			84.0	63.9
33			86.6	65.9
34			89.2	67.8
35			91.9	69.9
36			94.5	71.8
37				73.8
38				75.8
39				77.8
40				79.8
41				81.8
42				83.8
43				85.8
44				87.8
45				89.8
46				91.8
47				93.8
48				95.8

†The number of Months in the Unexpired Term shall be determined by counting from the effective date of the policy modification to the corresponding day of the month in succeeding months to the expiration of the policy, excluding any fractional part of a month remaining.

Short Rate Cancelation Table

Showing percentage of premium to be taken as earned premium

Months Policy in Force	One Year Policy	Two Year Policy	Three Year Policy	Four Year Policy
1	21.9%	11.8%	8.1%	6.2%
2	29.2	15.8	10.8	8.2
3	36.2	19.6	13.4	10.2
4	43.2	23.4	16.0	12.2
5	50.3	27.2	18.6	14.2
6	57.6	31.1	21.3	16.2
7	64.6	34.9	23.9	18.2
8	71.6	38.7	26.5	20.2
9	78.7	42.5	29.1	22.2
10	85.9	46.4	31.8	24.2
11	93.0	50.2	34.4	26.2
12	100.0	54.0	37.0	28.2
13		57.8	39.6	30.1
14		61.8	42.3	32.2
15		65.5	44.9	34.1
16		69.3	47.5	36.1
17		73.3	50.2	38.2
18		77.1	52.8	40.2
19		80.9	55.4	42.1
20		84.7	58.0	44.1
21		88.6	60.7	46.2
22		92.4	63.3	48.1
23		96.2	65.9	50.1
24		100.0	68.5	52.1
25			71.2	54.1
26			73.8	56.1
27			76.4	58.1
28			79.0	60.1
29			81.7	62.1
30			84.3	64.1
31			86.9	66.1
32			89.5	68.1
33			92.1	70.0
34			94.8	72.1
35			97.4	74.1
36			100.0	76.0
37				78.0
38				80.0
39				82.1
40				84.0
41				86.0
42				88.1
43				90.0
44				92.0
45				94.0
46				96.0
47				98.0
48				100.0

Less than one month shall count as a whole month and the percentage to be used shall be that specified for the next succeeding number of whole months.

The Travelers

The Travelers Indemnity Company

Hartford, Connecticut

Policy

Specimen Contract

No.

ISSUED TO

Expires 19

1-618 Ed. January 1940 PRINTED IN U.S.A.

The Travelers

Conference Form Policy for Boiler or Machinery Insurance
Copyright 1939 by J. P. H. deWindt

THE TRAVELERS INDEMNITY COMPANY hereby consents to the Assignment of Interest as made above.

Secretary

Recross-examination.

By Mr. Christian:

Q. Mr. Tabb, what work do these employees do?

A. These employees are all on salary and perform various duties, including inspection and rating of risks in claim adjustments, when necessary, and do all of the various things that come up in a general insurance business.

Q. How many bookkeepers are there among the nine?

A. We have very little bookkeeping because we operate our business on what is known as the card system.

Q. How many of them are male and how many of them are female?

A. Five men and five women. I made a mistake in the number.

[fol. 707] Q. Mr. Christian has frequently asked you about various customs among lawyers, comparing them with insurance agents. I will ask you if you ever heard of any practice among lawyers, if they happened to think some other lawyer had greater ability to handle a particular matter of business entrusted to them, to decline to take the case and recommend that the business be referred to another lawyer, supposed to be of greater ability, or that a lawyer who failed to do that would be guilty of any breach of ethics and duty to his client.

A. I have a high regard for the members of the legal profession and I think they would be as conscientious about a matter as anyone I know. In fact, I believe as a general practice when a criminal case is brought to a lawyer who is not well versed in that department he refers it to some more able criminal lawyer. I think the judgment of a lawyer as to who is most competent to handle a case is something that he could be readily excusable in not expressing an opinion on. That is up to his client.

[fol. 708] There are ten instead of nine.

Q. And the women are principally engaged, I suppose, in secretarial work and stenographic work?

A. And general office work.

Q. And the five men in the main are engaged in outside work?

A. Largely, with some inside duties, too.

Q. How many sub-agents does your agency have?

ASSIGNMENT OF INTEREST

The interest of the Assured in this policy is hereby assigned to.....

.....

whose address is.....

with respect to unearned premium and losses from accidents occurring after noon of.....*19*.....,

subject to the consent of THE TRAVELERS INDEMNITY COMPANY.

.....

(*Signature of Assured*)

THE TRAVELERS INDEMNITY COMPANY hereby consents to the Assignment of Interest as made above.

.....

Secretary

706b-3

A. Four all-time solicitors in my office. The outside business is handled with agents who do not give me all of their business and place it with me from time to time and are not licensed by my office for our company but are allowed to place business with my office.

Q. Those outside people are allowed to place the business with the branch office here instead of with you as general agent?

A. No, because the branch office takes no business over the counter. They only take business from their own agents.

Q. Are they outside agents, agents who have contracts with Travelers Insurance Company?

A. No.

Q. They are really, in their relationship with you, brokers?

A. Correct.

Q. And they are not sub-agents of your concern at all in the sense in which that term is ordinarily used?

A. Correct.

Q. And the only sub-agents, if it would be proper to use the term at all with reference to these people that you have, are these four whole-time solicitors that work for your firm?

A. Correct.

[fol. 709] Q. And they are licensed as solicitors under the Virginia law?

A. Of the Travelers and other companies, too.

Q. They are licensed as solicitors for Tabb, Brockenbrough & Ragland and not of any company under the new law.

A. No, I think they are all licensed specifically, according to my recollection. One of the four, I think, has a contract with the Travelers Insurance Company as an agent and is licensed as a Travelers' agent. The other three, I believe, are not licensed as Travelers' agents, nor do they have contracts, I believe, with Travelers but they are simply authorized as solicitors for my office and licensed as such.

Q. Do all have authority to solicit casualty and surety business?

A. The solicitors, yes—all forms of insurance written by my office.

Q. Ordinarily in this business about which we are speaking would you service your assureds and the other partners

and the solicitors service theirs or would you at times be servicing theirs for them?

A. Usually, in the absence of any complications, each partner services the business he is directly in touch with but very frequently all of us perform service regardless of who writes the business.

Q. You mean you might be out of town when occasion for service would arise and, in that case, one of your partners would service it but if you were in town they would ordinarily ask you, wouldn't they?

[fol. 710] A. Yes, of course we do it under those conditions, but also we confer frequently as to the best methods of handling cases of all kinds arising under any policy issued in our office.

Q. Did you mean to leave the impression on the court that in talking about this tobacco risk we spoke about the other day or this risk with the 800 coverages that the court ought not to consider your testimony as completely presenting the service that was rendered on those contracts because somebody else down at your office might have rendered some without your knowing about it?

A. No, I think my testimony is complete regarding those cases because I produced them myself and usually looked after the entire details.

Q. And that is so of these workmen's compensation risks you have got covering away from Virginia and outside of Virginia, isn't it?

A. Yes, though my partners have produced similar business.

Q. I mean you know about your business and they know about theirs; isn't that right?

A. Yes, sir, and I usually know about all of them because I more or less come in contact, as head of the firm, with all the business produced.

Q. Friday when we were speaking about the Travelers engineering and claims services and their various characteristics, I understood you to say that you did not feel sufficiently acquainted with the engineering and claim services of the Fidelity and Casualty Company of New York, Maryland Casualty Company, United States Fidelity & Guaranty [fol. 711] Company, Aetna Casualty & Surety Company and such other leading companies as the Globe, Employers Liability, New Amsterdam, Ocean and similar companies, to compare the characteristics of their claims and engineering

services with the characteristics of the Travelers' engineering and claim services? Is that understanding on my part correct?

A. Yes, I made the statement and reiterate that I have had no absolute experience with them except from a general competitive knowledge gained from common hearsay which may or may not be an accurate gauge.

Q. You think, without going into the details of why the Travelers is better, that the Travelers is the best, don't you?

A. Yes, sir, because I have had 45 years' experience with them and get the reactions from policyholders.

Q. And you are loyal to that company and believe in the Travelers?

A. I do, sir, 100%.

Q. Give a specification of things which the Travelers claim department, under the jurisdiction of Mr. Davison, attempts to do which the claim departments of those other companies do not attempt to do. I will say if you do not know anything specific you may answer by saying so.

A. I would say that the claim department of the Travelers is headed by a man of 25 or 30 years' continuous connection with the company and his service and ability, in my judgment, are very superior and cause prompt settlement of claims and very valuable accident prevention service which [fol. 712] I don't think could possibly be furnished by part-time claim departments of other companies.

Q. These companies other than the Travelers, about which I have been speaking, are selling their contracts at substantially the same rates as the Travelers and sell in a substantial way the same identical contracts, don't they, having in mind, of course, that the Travelers Insurance Company and the Travelers Indemnity Company do not sell fidelity, surety, or forgery contracts and that the Travelers Indemnity Company alone, of the two, writes the boiler insurance and perhaps other lines. With those exceptions is not what I say correct, that the forms of contracts among the various competitors are substantially the same?

A. Yes, I judge they are practically the same and many times identical on account of standard forms being used, but the administration of the policy may be as wide as the poles.

Q. And these other companies, to the extent that they have volumes of business as shown by the record, have gotten and retained their business up to this time while selling

substantially the same contracts as the Travelers companies and at substantially the same premium charges, have they not?

A. Yes, I presume the rates are more or less uniform.

Q. That is not what I asked you. You had already said that was so. What I am asking you now is—isn't it a fact that what business these other companies have they have been able to secure and retain and keep from going to the Travelers in open, fair and honest competition with the Travelers?

A. I would say so. I have no evidence to the contrary.

[fol. 713] Q. And a part of that competition is their claims and engineering services, is it not? In other words, are not these services factors which enter into the successful or unsuccessful competition?

A. Yes, but I think I would conclude that their small business shows rather conclusively that their service is not up to the Travelers and other companies.

Q. What other companies?

A. Other companies who maintain varying degrees of service.

Q. What other companies have a larger business in Virginia than those we have been talking about except the Travelers?

A. Well, the difference in premium volume is quite pronounced in those companies so it might be concluded that service had a great deal to do with the comparative premium volume of those companies in Virginia.

Q. In forming an accurate opinion as to whether that is a just conclusion wouldn't you have to know about a good many more factors involved in their competition, such as the period of time the two companies have been in business?

A. That, of course, and many other factors, have to enter into it, but I think in this day of competition the company that keeps its prominence in the casualty business has got to render service and stand being shot at from all the other competitors.

Q. Don't you think that the fact that the Travelers is a multiple line company with a huge volume of life insurance business and a considerable line of fire insurance business [fol. 714] and a splendid good will in connection with those two businesses, existing before it went into the casualty insurance business, had a benefit in its vast pool of assets

and its vast good will from those other two lines of business and its vast agency organization already created and available to write casualty business, constituting competitive assets not available to the newer companies, not multiple line companies or members of groups furnishing the multiple lines?

A. Of course, these factors enter into it but the Travelers Fire Insurance Company was formed long after the Travelers Indemnity or the Travelers Casualty Departments. Of course, the matter of assets and other predominant factors of the Travelers must help, of course, in its general development of business but I insist that its service in connection with local business, both in claims and in engineering service, is acknowledged to be superior by most buyers of insurance with whom I come in contact and I feel that it is superior.

Q. And the method of their acknowledgment of this superiority is that you are successful in selling them and getting them to hold Travelers contracts instead of some others, isn't it?

A. Largely, yes, sir.

Q. And if you left the Travelers tomorrow, as you rather boldly proclaimed when I was trying to compare you with a clerk in Greentree's store, and you got all of these assureds to go with you to the Aetna or the F. & C., or wherever you went, then by the same token you could come on the witness [fol. 715] stand the next day and claim that most of the people you came in contact with thought that your new company had a superior claim service and engineering service, couldn't you?

A. I would certainly hope that it was possible to develop that thought and that result.

Q. But you still say you control your casualty and surety business, don't you?

A. Yes, I do.

Q. You said a small percentage of these 80 maintain a local establishment in Virginia for engineering and claim service. I ask you to designate which of these 80 companies —and I hand you the Virginia Insurance Report containing, at pages 268 to 271, their names, in order that you may elucidate to the court the ground on which you said only a small percentage of them maintained these establishments. I ask you in phrasing your answer to state which ones do not

maintain those local establishments, though I have no objection, if it will assist in making your answer brief, to your affirming that none do except those which you designate.

A. 11 are all I can find in there that I think maintain them.

Q. They are the Aetna Casualty & Surety Company, Continental Casualty Company, Fidelity & Casualty Company of New York, Fidelity & Deposit Company of Maryland, Globe Indemnity Company, Hartford Accident & Indemnity Company, Maryland Casualty Company, National Surety Corporation, Travelers Indemnity Company, Travelers Insurance Company and the Ocean Accident & Guarantee Corporation, Ltd.?

A. Yes.

[fol. 716] Q. What about the American Surety Company?

A. I don't think they maintain a claim department and an engineering department as contemplated by the question I understood Mr. Christian to ask.

Q. I used the expression which you used in your testimony on redirect examination in referring to a local establishment. Does that change your understanding of my question when you know I am talking about a local establishment as you used the expression?

A. No, I understood you to refer to all-time claim departments located in Richmond for the exclusive handling of Virginia claims and engineering service and accident prevention.

Q. So these are the people that, according to your impression, have the whole-time employees?

A. Yes, sir, giving this service.

Q. Do all of the others have, according to your understanding, the part-time services of claims and engineering people in Virginia.

A. No, I think most of them have offices outside of Virginia, such as Washington or Baltimore, and send these men in when occasion demands.

Q. Provided they come often enough from Washington or Baltimore and come rapidly enough when occasion arises, would there be any difference between their having an office in Washington and having it across the river in Alexandria?

A. No difference from a physical standpoint but I doubt if they would come often enough and would keep in as close touch with their risks as men who are on the ground and have only that duty.

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[fol. 717] Q. You can get to Alexandria just as readily from Washington or Baltimore as you could get to Alexandria from Richmond, couldn't you?

A. Yes, but the bulk of the business is in Richmond and vicinity and, therefore, local people can give the better service.

Q. Don't these large assureds usually contract for workmen's compensation and liability insurance with one of the leading companies or do they frequently contract for it with one of the companies which is not among the leading companies?

A. Well, of course, it must be usual on account of the volume of premiums which would indicate this fact.

Q. And that is more particularly true in the case of a large assured placing risks which cover in a large number of states than it would be true where the coverage was only in one state and where it might in influenced by some local condition.

A. I should say so, yes.

Q. Do I understand that you still stick to it that Mr. T. Garnett Tabb, with his residence and place of business in Richmond, Virginia, with the help of this particularly efficient claim department and particularly efficient engineering and safety department of the Travelers, can render adequate service to his assureds on workmen's compensation and other risks, even though the localities of the coverage are at distant points in the State of Virginia and in other states than Virginia?

A. Yes, sir, I think I can give efficient service.

Q. And you don't need the help of any local agent for your assureds to get adequate service in those cases?

[fol. 718] A. I have not felt the necessity in many cases up to this speaking and I, (of course, would not require it if I didn't need it.

Q. You said the other day that you hadn't required it in the case of any of these workmen's compensation risks covering in points distant from Richmond, either in Virginia or other states where you had produced as an agent; is that correct?

A. Yes.

Q. And your point, as I understand, is that whereas that condition exists as to Mr. Tabb, due to his connection with the Travelers, in the case of the average Virginia agent

with the average company admitted to Virginia that would not be true, in your opinion, because the engineering and claim service of the average company isn't as efficient as the engineering and claim service of the Travelers; is that correct?

A. That is largely the reason for my feeling.

Q. And dealing now neither with the Travelers nor with average companies, but dealing with the other leading companies, your answer is that you are not sufficiently acquainted with the claim and engineering departments of any particular one of them to pass on the matter from the standpoint of that one particular company's agent; is that correct?

A. I can only judge by general information that is not such as I could testify to any particular case and so, of course, my opinion is just based on the results of competitive conditions with these companies.

[fol. 719] Q. But you don't make any statement of that sort as to Davenport Insurance Corporation and F. & C., or as to Gibson, Moore & Sutton and the Maryland? You are just making it as to the average company and the average agent and not a leading company and a leading agent such as Davenport and F. & C., or Gibson, Moore & Sutton and Maryland; is that correct?

A. Well, I still feel that the Travelers put me in a better position than any of the companies mentioned.

Q. It even puts you in a better position than the F. & C. does Davenport or Maryland does Gibson, Moore & Sutton?

A. Yes, I think so.

Q. But you admit you can't point to anything that the Travelers' claim department or the Travelers' engineering department furnishes that the F. & C. and Maryland departments don't furnish? Is that correct?

A. I think their basic thought in handling those department is largely the same but I think the results are different.

Q. But you admit you don't know anything about their results?

A. Well, I know, yes, in competitive conditions but it is an intangible thing that I couldn't exactly put on paper in testimony.

Q. At least there are some mighty big local assureds that you haven't been able to convince that your views are correct and get the business away from those people, aren't there?

A. Yes, but I don't know on what basis it is that I haven't been successful, whether it is service or personality or other [fol. 720] things that enter largely into insurance placing.

Q. Won't you concede that your personality and your personal relationships with a good many mutual friends of yours and mine have been heavy factors in getting you the business of their corporations?

A. Yes, it always enters into it.

Q. It might have been that your personality and that personal relationship was a controlling factor rather than this purported superiority of Travelers' claim and engineering services over the claims and engineering services of other companies? Isn't that correct?

A. Certainly.

Re-redirect examination.

By Mr. Staples:

Q. I ask you whether or not you know or have heard of any contracts made outside of the state by Lloyd's covering in Virginia, relating to workmen's compensation insurance or fleet liability insurance?

A. No, I have never come in personal contact with any of these two lines written by Lloyd's, but I have come in contact with various other lines written by Lloyd's.

Q. What other lines have you come in contact with?

A. Banker's blanket forms principally, jewelry insurance and excess cover under public liability.

Q. Is the excess cover contract made with another insurance company in the nature of reinsurance or what is excess coverage?

[fol. 721] A. It is made with the assured to cover him for any amount in excess of a stipulated amount in his contract.

Q. In a case of that kind does another insurance carrier have a similar risk?

A. They have primary coverage. In other words, the stock company has the loss up to a certain extent or the insured may carry it himself and then Lloyd's simply pays any loss in excess of that stipulated amount.

Q. Is it customary for most of these contracts to be carried by the carrier and not by the insured in the nature of reinsurance?

A. I did not refer to reinsurance. I referred to excess or additional coverage which is not reinsurance.

Q. Does Lloyd's render any service in Virginia on these excess insurance contracts that you know of or have ever heard of?

A. I never heard of their rendering any. It is usually done by correspondence through Canada or direct to the company in London or, in cases, through a Chicago connection.

By Mr. Christian:

Q. Mr. Tabb, in the case of both the small volume casualty and surety companies as well as non-admitted casualty and surety companies, there are available to their employment, in connection with claim and safety and engineering matters, independent attorneys and independent adjustors like the Nichols Company and independent engineers who attempt to furnish, as independent contractors, these various services to people not providing them by their own salaried employees, are they not?

[fol. 722] A. Yes, there are both independent attorneys and independent adjustors, but just how far their services would go in such connection, I don't know.

Q. And there are independent safety engineers, are there not?

A. Yes.

Q. And the Nichols Company, for instance, to your knowledge, represents numerous casualty and surety companies not maintaining salaried claim departments in Virginia, does it not?

A. I so understand they do.

Q. And that is so of certain engineers in Richmond, is it not, who purport to furnish inspections and so on?

A. I don't know about the engineering and inspection service but I presume some such service is procurable in a city like Richmond.

Q. The independent adjustors advertising in the classified section of the Richmond telephone directory, in addition to Nichols, Inc., include Coastal Insurance Adjustors, W. H. Davidson, Henry B. Frazier, Jr., Old Dominion Adjustment Bureau, Inc., Robert R. Reed, John A. Ryan, Jr., Seibert Company, Inc., and Frank D. Young, do they not?

A. Yes, I see that advertisement.

Q. And you are well acquainted with the firm of Froehling & Robertson, Inc., as people of long standing and high stand-

ing in the City of Richmond whose name you see there as advertising that they are in the business of inspection engineers, do you?

[fol. 723] A. Yes, but my knowledge of that firm would not justify me thinking that they catered to the class of inspection included under an insurance policy.

Q. You don't know any engineers that make a specialty in Richmond of doing independent inspecting under insurance policies?

A. I do not.

By Mr. Staples:

Q. Do you know of any independent organizations that render service to insurance companies or purport to do so with reference to safety meetings?

A. I do not.

Q. Did you ever hear of a non-admitted company employing any of this type of service referred to in Mr. Christian's last question?

A. I did not.

By Mr. Christian:

Q. As a matter of fact, you don't come in contact with what the non-admitted companies do but, instead, come in contact substantially with only what the companies which you represent do; isn't that correct?

A. That is correct.

T. T. Moore, a witness called on behalf of the defendants, and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Moore, I wish you would state your name, age, residence and occupation, please.

A. T. T. Moore; Chief Examiner, Bureau of Insurance: [fol. 724] residence, Richmond, Virginia.

Q. Mr. Moore, do your duties with the Bureau of Insurance, a division of the State Corporation Commission of Virginia, place upon you the obligation and discretion generally in enforcing the statutes relating to insurance insofar as they apply to the insurance agents and relations of these agents with the insurance companies?

A. My duties in the Bureau of Insurance place the active work of handling agents and agency matters and licensing of agents in my charge, subject, of course, to the supervision of The Commissioner Bowles and the Corporation Commission.

By Mr. Staples:

Q. There has been incorporated in the stipulation of facts in this case a letter which was written on September 9, 1938, on the stationery of the Bureau of Insurance and which is signed by George A. Bowles, Commissioner of Insurance. Under the signature "George A. Bowles" is the letter M. This letter relates to the construction which the Bureau of Insurance was then placing or had placed upon certain statutes which are involved in this suit and with which you are familiar. The letter was written in reply to a letter from Mr. Christian, bearing date September 6, 1938, addressed to Mr. Bowles in which he inquired as to the construction placed by the Bureau of Insurance upon these statutes. I will ask you whether or not this letter in question, a copy of which I will now show you, was actually written by you or whether same was really written by Mr. Bowles.

A. I actually wrote the letter.

[fol. 725] Q. The fifth paragraph in that letter is as follows: "In our opinion Section 4226a requires a non-resident producer of a contract covering in Virginia to have a Virginia broker's license, even though none of his solicitation or other activity takes place within this State." Will you please state what you intended to mean by that language when you incorporated it in that letter?

A. I intended it to mean that, that would be true where the non-resident broker received or was to participate in the commission.

Q. Was that intended to have any application to a case in which the non-resident broker did not participate in the commissions but received such compensation as he may have received or might receive directly from the insurance company?

A. No, sir.

Q. Will you please state the two general classes under which agents' licenses issued by your department, are divided by the 1938 statute?

A. What are termed resident agents and what are termed, generally speaking, company representatives.

Q. Within those two general divisions of agents what licenses are issued within each?

A. As far as company representatives are concerned, there is only one class of company representative license which is issued to state agents, so-called special agents and branch managers. In addition to the resident agents' licenses issued to individuals, there is also an agency license [fol. 726] and also sub-agents, known as solicitors.

Q. Mr. Moore, your answer may not be entirely clear to the court as to which of these two divisions the resident agent's license falls and I wish you would please draw the line a little more clearly in your answer. State it all over again, if you wish, and take division No. 1 and then division No. 2.

A. I have divided the licenses issued by the Bureau of Insurance into two general classes, the first being the license issued to the so-called company representative.

By Mr. Staples:

Q. Stop there and I will bring it out.

Q. I will ask you to state the types of licenses issued in that class as I believe the court can more readily understand the matters if the two classes are kept separately.

A. There is only one form of license issued to this class of company representatives, the same license being issued to State agents, special agents, branch managers, etc.

Q. What do you call that license when you issue it?

A. We call it a special agent's license.

Q. Isn't there any other license which you issue to salaried employees of an insurance company in Virginia?

A. No, sir.

Q. Coming to the second division, what licenses do you issue to persons working on a commission basis for the securing of insurance policies?

A. A resident agent's license is issued to individuals pro- [fol. 727] curing business, etc., on a commission basis.

Q. What licenses do you issue to sub-agents, if any?

A. Sub-agents of resident agents of agencies may be licensed as solicitors.

Q. What is a resident agency license?

A. A resident agency license is a license issued to a firm or corporation engaged in soliciting business, etc., which is operated by a resident agent or agents.

Q. Where there is more than one resident agent it is termed a resident agency license; is that correct?

A. No, sir, the resident agency license is issued to a firm or corporation, as the case might be, when the business is conducted as a firm rather than as an individual, regardless of whether there is one or more than one resident agent connected with it.

Q. Since the 1938 Act became effective has the department issued any resident broker licenses?

A. Not since the 1938 Act became effective.

Q. To what type of person is a non-resident broker's license issued?

A. A non-resident broker's license is issued to a person or firm located in another state who is duly licensed as an agent or broker in that state.

Q. Are there any other types of licenses issued to persons working in the insurance business on a commission basis?

A. Excluding life insurance, there are none.

Q. I believe the testimony you have given above applies only to fire insurance, casualty insurance and surety busi-
[fol. 728] ness; is that correct?

A. It applies to all forms with the exception of life, title and ocean marine. That is the way the Act reads.

Q. I will ask you if you can state the number of resident brokers' licenses issued in Virginia for the year ending April 30, 1935.

A. There were three resident brokers' licenses issued for the license year ending April 30, 1935.

Q. Have you computed the information up to a recent date, within the last month or two, which would show the total fees paid into the State for licenses for non-resident brokers, the total number of licenses issued and the average fee paid by each?

A. I have computed the total of fees for broker's licenses, both resident and non-resident, for the year beginning April 30, 1938, to sometime in November, 1938, and the average fee paid for such license was $19.54.

Q. Give the total number of licensees and the total receipts.

A. 328 licensees and total receipts $6,410.33.

Q. I wish you would state, if you have the information, what were the total net premiums of stock fire insurance companies which were reported as a basis of taxation by the various companies for the calendar year 1937.

A. Total net stock fire insurance premiums for the year 1937, covering in Virginia, including tornado, inland marine, automobile fire and theft, and other lines done by fire companies, amounted to $10,568,780.

[fol. 729] Q. This amount represents, as I understand it, all amounts reported for taxation, regardless of whether the business was actually negotiated in Virginia or negotiated and written outside of Virginia?

A. That is correct.

Q. Will you please give the same information with reference to all other stock insurance companies except life, title and ocean marine insurance companies?

A. The total premiums reported for all other forms of stock insurance, excluding that written by life, title and ocean marine and fire insurance for the year 1937, is $9,830,634.

Q. I wish you would state, if you can, the total number of agents in Virginia who had been licensed during the current year up to November 28, 1938, as resident agents in Virginia for fire, casualty and all other forms of insurance except life, title and ocean marine insurance companies.

A. The total number of individuals who are so licensed as resident agents is 2,959 persons.

Q. Are these all agents for stock companies?

A. These are all representatives of stock companies.

Q. Is that the total number of individual resident agents of stock companies who had been licensed from April 30, 1938, to November 28, 1938?

A. No, sir, it is the total number issued since July 15, 1938, to November 28, 1938.

Q. That is the number of individuals and does not take into account any duplicate licenses which may have been issued to one agent for representing more than one company, does it?

[fol. 730] A. That is correct. It is the number of individuals.

Q. Do you know whether there have been licenses continually issued since that time?

A. There have been licenses issued continually since that time but I am unable to say just how many have been issued.

Q. Have you included in any of the figures you have given as to the number of licenses issued to resident agents any licenses which have been issued to company representatives

under the first division of licenses to which you referred in your testimony a few minutes ago?

A. No, sir, I have not.

Q. The answer in this case alleges that "the Virginia statutes here challenged have divided and classified into two separate classes or groups the persons engaged in Virginia in the business of procuring or of assisting or supervising others in procuring the making of certain insurance casualty and surety contracts." Are the two divisions which you have testified about today the ones referred to in that answer?

A. They are.

Q. Under the construction which your Department has placed upon the statute with reference to granting licenses to company representatives and resident agents, is it permissible for one person to have both classes of licenses as a representative of the same company?

A. No, sir.

Q. Does your Department construe the Virginia statute as prohibiting non-resident persons, who are not licensed as non-resident brokers in Virginia to negotiate contracts [fol. 731] outside of Virginia covering risks in this state?

A. No, sir.

Q. Has your Department construed it as a violation of law for an insurance company to pay a non-resident, who is not a licensed non-resident broker in Virginia, for his services in negotiating such a contract outside of Virginia?

A. No, sir.

Q. What is the extent to which your Department is enforcing and intends to enforce the law so far as the status of non-resident persons who may negotiate Virginia coverage contracts out of this state is concerned?

A. The Department intends to require every non-resident broker to secure a license in order to participate in the commissions on business which he might write covering in Virginia, and, by participating in the commissions, I mean participation or sharing in the resident agent's commission.

Q. If an insurance company which itself is licensed in Virginia should employ a non-resident person, not licensed as a non-resident broker or otherwise, in Virginia, to negotiate for such company a contract of casualty, surety or fire insurance, and pay such person a commission therefor, would your Department institute any proceedings for

the revocation of the license or consider that such company had in any way violated the Virginia Statute?

A. Not as long as the resident countersigning agent in Virginia received his full commission.

Q. What does your department construe the words "usual and customary commissions" as used in Section 4226a of [fol. 732] the Code to mean?

A. The Department construes that to mean the usual and customary producer's commissions.

Q. Would that include any over-riding commissions usually paid to general agents?

A. It would not.

Q. Is the Department construing the statutory provisions in such manner as to make it unlawful for a branch manager, or any other officer or employee of an insurance company to countersign a policy or contract, provided same is also countersigned by a resident agent?

A. No, sir, not as long as it is countersigned by a resident agent.

Q. What does your department construe the words, as used in Section 4222 of the Code, requiring all such policies and contracts "made through regularly constituted and registered resident agents" to mean?

A. We construe that to mean countersigned by a resident agent.

Q. Then any such contract, even though entirely negotiated outside of the state, if it is sent to a registered resident agent of Virginia and countersigned by him, is deemed to be made through such agent as your Department construes this requirement in Section 4222 of the Code?

A. That is correct.

Q. If a fire insurance, casualty or surety company sends to a registered resident agent of Virginia a policy or contract of insurance, is there any reason, so far as you know, under the statutes as construed by the Bureau of Insurance, [fol. 733] to prohibit or prevent such resident agent from countersigning same and returning the policy to the company which sent it to him for countersignature?

A. No, sir.

Q. Your department then does not construe it as a requirement of the statute that a non-resident licensed broker shall send the policy to a resident Virginia agent?

A. No, sir, we do not.

Q. I wish you would read paragraph 16 of Defendants' answer in this case and state whether or not the statement therein contained as to the interpretation placed by the defendants upon the 1938 statutes is in accordance with the interpretations and enforcement thereof which your Department is now, and intends in the future, to apply to the transactions referred to in that paragraph of the answer, and, if not, please point out in what respect same is not in accordance therewith.

Mr. Christian: I object to this question. It seems to me obvious that when this gentleman has testified that he is a subordinate of the defendants in this case and he is brought here as a witness to swear to facts which they consider advisable to prove in this case, and counsel asked him to read a part of the answer drawn by counsel and say whether or not it is correct or is not correct, it would be a remarkable misunderstanding between counsel and the witness in the drafting of the answer for it to prove to be incorrect, as counsel has presumably drawn the answer in accordance with his understanding of his client's desires.
[fol. 734] I further object to the question in that it calls for testimony by the witness as to certain matters not material at all to this litigation and not material at all to the law which is in dispute here.

A. Paragraph 16 of the answer reads:

"The defendants deny that they have construed, are construing, or will construe or enforce the provisions of the statutes contained in the 1938 Act, referred to in the complaint, in the manner alleged in the complaint, but aver that they will enforce same in accordance with the following interpretations, which are the defendants' interpretations of said statute:

"(a) Contracts are made 'through regularly constituted and registered agents or agencies of such companies' as required in Code section 4222 when such contracts are countersigned by a 'Resident Agent' as required by said section, even though he does not negotiate the contracts or deliver same, or collect the premiums."

I have already testified that this is the construction placed on the expression used in section 4222 "through

regularly constituted and registered resident agents or agencies of such company."

A. (Continuing) Paragraph (b) reads as follows:

"The making of the contract in this manner 'through' such a 'Resident Agent or Agency' imposes on such agent or agency the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff, in [fol. 735] connection therewith, as customarily apply in cases where the 'Resident Agent' himself negotiates a similar contract."

It is certainly the construction of the Bureau of Insurance that the resident agent or agency, through whom the policy or contract of insurance is placed, has the duty of reviewing the policy forms, the conditions of the contract, its applicability and, in general, the servicing of the contract in the same way as if the policy had originated in his own office. This is certainly the custom of the business.

Mr. Christian: I object to that answer on the ground that it is as to a matter which is immaterial to this case, inasmuch as there is no requirement of law to support the claimed view of the defendants as to what is the duty of an agent, whether he was the originator of the contract or not, in respect of servicing and altogether what he says is merely undertaking to add something to the law to support the outrageously unreasonable requirement of the law for the receipt by the Virginia countersigner of 50% of the commission, regardless of its size and regardless of the disproportion in the value of the services of the producer and the countersigner.

Q. You have reference, I believe, to contracts negotiated entirely outside of the state but which cover risks in Virginia, as well as contracts negotiated inside of the state where one agent associates another with him?

A. That is correct.

Q. Now, you can go ahead.

A. Paragraph (c) reads as follows:

"A 'Resident agent' may lawfully countersign a contract [fol. 736] at the request of his company or its 'Branch Manager', or any other 'Company Representative' or non-

resident office-, though the officer be not licensed as a representative. In such case the contract is made 'through' such 'Resident Agent.' "

In our opinion a resident agent may lawfully countersign the contract at the request of a branch manager or other person outside of Virginia as long as he receives the full commission on such business. Of course, if he divides his commission with a non-resident broker, the non-resident broker in that case must be licensed.

Paragraph (d) reads as follows:

"A 'Resident Agent' may lawfully countersign a contract at the request of any licensed, registered 'Resident Agent' or licensed 'Non-Resident Broker', and may pay to any such broker as much as one-half of his commissions on said contract."

This paragraph is simply a restatement of what I have already said to the effect that business may be written at the request of a licensed non-resident broker and that a resident agent may pay to such licensed non-resident broker not more than half of the usual commission.

Paragraph (e) reads as follows:

"A 'Resident Agent' through whom a contract is made, (as in (a) supra), must receive the full amount of the commission which he customarily receives on similar contracts, whether the contract is negotiated by the 'Resident Agent' through whom made, or negotiated by a company plaintiff, or outside of Virginia by a non-resident agent or broker for a company plaintiff."

[fol. 737] This is also our interpretation of the Act.

Paragraph (f) reads as follows:

"A 'Resident Agent' through whom a contract is made, as above set out, may not lawfully rebate to the insured any part of his commission, or pay any part thereof to any person, whether a resident of Virginia or not, unless such person is licensed and registered in Virginia either as (1) a 'Resident Agent' or (2) a 'Non-Resident Broker-.' "

This paragraph discusses the prohibition of rebating and this, in the opinion of the Department is prohibited by law.

Q. What about paying a part of his commission to a person not licensed as a resident agent or non-resident broker?

A. It would be construed as rebating.

Paragraph (g) reads:

"A company plaintiff is not prohibited by Virginia law from making in other states Virginia coverage contracts, or from availing itself of the service of unlicensed non-resident agents or brokers in negotiating same through such agents or brokers, or from paying commissions for such services, provided the contract is made 'through' a Virginia 'Resident Agent', as in (a) supra, and provided the said Virginia 'Resident Agent' receives his customary commissions as in (c) supra."

This paragraph is largely a restatement of what has already been said, that the law does not prohibit the resident agent from handling business received from his company or others, as long as he receives the full commission.

Paragraph (h) reads as follows:

"A Virginia non-resident broker's license confers on the [fol. 738] licensee the privilege of soliciting in Virginia either companies, or prospective assureds, or both, to make contracts; and also the privilege of making contracts so secured, or secured through negotiations outside of Virginia, through Virginia 'Resident Agents' as set out in (a) supra, and renders such licensee eligible to receive from such 'Resident Agents' as much as one-half of the commissions received by such 'Resident Agents', on any contract made through such 'Resident Agents' as in (a) supra."

This paragraph states that a non-resident broker's license confers upon the non-resident broker the privilege of soliciting in Virginia and receiving a portion of the commission paid to the resident agent in Virginia who countersigns the policy. This is certainly our construction of what a broker may do.

Q. What is the function of a solicitor under a Virginia license and what does he do?

A. A solicitor is a person who solicits business to be placed through a resident agent. He is responsible to the resident agent as opposed to an agent who is responsible to the company.

Q. State whether or not you have conferred with the members of the State Corporation Commission and the Commissioner of Insurance and discussed with them generally and reached an understanding as to the interpreta-

tion of these statutes in accordance with the opinions and statements you have hereinabove made.

A. I have discussed the interpretation and statements I have made with the Commission and with the Commissioner of Insurance and they concurred in these views.

[fol. 739] Cross examination.

By Mr. Christian:

Q. Early in your testimony you said that the matter of handling agents is in your charge. Please say what you mean by this.

A. By that I mean the handling of licensing of agents, and, to a large extent, the controversies that come up in connection with the administration of agents' laws and laws relating to agents.

Q. Do those controversies of which you speak include, in the main, allegations of illegal conduct by agents and investigation and findings and the taking of disciplinary measures where proper?

A. I wouldn't say they were mainly that. That is partly.

Q. What other subject-matters are there in controversy?

A. Questions arising as to the construction of the agents' laws, questions in regard to the impropriety of issuing licenses, etc.

Q. Construction of the law becomes important in connection with what sort of controversies, other than those I have mentioned?

A. Well, it simply means construction of laws in the way in which agents conduct themselves.

Q. You don't have anything to do with how they conduct themselves except in respect of the class of controversies I mentioned, to-wit; whether they are conducting themselves [fol. 740] lawfully or unlawfully, do you?

A. That may be correct, sir, but questions do arise regarding the conduct of the insurance business which the Insurance Department is called upon to express an opinion on.

Q. The point I am making, however, is that you don't have anything to do with handling agents except insofar as the administration of the insurance laws require the Insurance Department to have dealings with agents, do you?

A. That is correct.

Q. And you don't handle agency matters except to the extent that the insurance laws of Virginia relate to agency matters?

A. That is correct.

Q. And, therefore, your experience in the insurance business is limited to the administration of the insurance laws, is it not?

A. That is correct.

Q. Referring to the letter which you wrote me in answer to my letter to Mr. Bowles, and to paragraph 5 of that letter, what commissions do you mean to refer to when you say that paragraph 5 only applies where the broker is to receive a part of the commissions?

A. I assume by this you refer to the division of commissions between the licensed non-resident broker and the resident agent which I have already testified we interpret to mean producer's commission.

[fol. 741] Q. Is my understanding correct that so long as some Virginia countersigner receives and retains to his own exclusive benefit the full amount of the usual and customary commission paid for producing an insurance contract, you consider that Section 4226a does not make it unlawful for the non-resident producer, truly producing outside of the state the contract covering in Virginia, and licensed in his own state as an agent or broker, to receive additional compensation out of the premium?

A. In our opinion 4226a does not prohibit additional compensation being paid the non-resident broker as long as the resident agent in Virginia receives the usual and customary commissions.

Q. Is it a fair inference then that under this law, as you construe it, the State of Virginia has set up a situation whereby, if these non-resident producers of contracts covering in Virginia pay it for a license, then the company can get the Virginia countersignature for half of what it would otherwise cost the company to get the Virginia countersignature?

A. It is perfectly true that if the non-resident broker is not licensed, the resident agent in Virginia would be required to retain the full commission but that if the non-resident broker was licensed, the resident agent would only be required to retain not less than half of the commission.

Q. Is not that in effect an attempt by the State of Virginia to bring leverage and duress to bear on these foreign

companies admitted to Virginia and upon the transaction of the non-Virginia production of their business covering in [fol. 742] Virginia so as to compel the taking out of these Virginia licenses by these non-resident people who are not going to do any acts in the state of Virginia?

A. I do not feel that it is a matter of duress but simply a method of regulating the handling of the business.

Q. Isn't it a method of attempting indirectly to compel these non-resident members to pay Virginia for a privilege that they exercise outside of Virginia?

A. Of course, it does require the payment of a license fee by a person who may not actually come into Virginia but he still has the privilege of coming into Virginia.

Q. Isn't it a fact also that in order for the companies to get these Virginia countersignatures at one-half of what they would otherwise have to pay, they not only have to deal in those transactions through non-resident producers of the business, licensed in Virginia, but that those non-resident producers licensed in Virginia, must be willing to make an affidavit that they will not do any production activity in their own states covering in Virginia without getting the contracts countersigned by a Virginia resident agent?

A. It is a fact that each company licensed in Virginia is required to file an affidavit each year.

Q. Doesn't each broker who is licensed in Virginia have to file the same affidavit?

A. No, sir, this is the only affidavit he files (handing counsel a paper).

Q. I read you section 4226a of the 1938 Act in part as follows: "Before the Commission shall issue a license to any [fol. 743] such non-resident insurance broker, the applicant shall make affidavit that he will not, during the fiscal year, place directly or indirectly any contracts of insurance or surety upon persons or property located in this state except through duly licensed resident agents or agencies." That is in Section 4226a, isn't it?

A. That is correct, and the application for a broker, which is in affidavit form, further certifies that the broker agrees to comply with all provisions of the law which would take that in, I assume.

Q. So your indication just now that the company has to file an affidavit, but that a broker did not have to file it, was incorrect, was it not?

A. It was incorrect to that extent.

Q. Isn't that extent the full extent, that it was absolutely contrary to the facts?

A. It was not incorrect in that a broker does not have to file the same sort of affidavit filed by the company. The company files an affidavit specifically setting forth that all policies are countersigned, and so forth, as required by law but in the application for a license as broker, which is sworn to, the broker agrees to comply with all provisions of the Virginia Statute?

Q. What you refer to as an application is a statement under oath, is it not?

A. I think so.

Q. And that is an affidavit, is it not?

A. That is my understanding.

[fol. 744] Q. What words of the statute justify the defendants declining to issue a license as resident agents to the plaintiffs in this case with whom and with whose status I believe you to be familiar: William H. Osborn, Lewis C. Adair and Channing F. MacNeil?

A. I believe all of these gentlemen are salaried employees of companies and I believe Branch Managers, and would not, therefore, come within the definition of a resident agent, but would be classified as Special Agents.

Q. My question was directed to ascertaining from you what portions of the 1938 Act say that because a man is paid by salary, rather than by commission, he may not be licensed as a resident agent but may only be licensed as a company representative or special agent?

Mr. Staples: This question is objected to as the witness is not an attorney at law and is not in a position to state the various statutory provisions applicable to the general status of the law as construed in his office. He has not been offered as a witness for that purpose but has been offered as a witness to state the construction which the Insurance Department and the State Corporation Commission have placed upon the Act. Whether this interpretation is justifiable, or not, is a question which counsel may argue to the court with the statutes, if he so desires, but not with the witness and I advise the witness it is not necessary for him to answer questions of this kind, that it can throw no light upon the case and [fol. 745] he is not qualified to engage in a legal debate with counsel for the plaintiffs. Opposing counsel may take the question up with the court, if he desires to compel an answer to this type of question.

By Mr. Christian:

Q. I call on the witness to either answer the question or refuse to answer.

A. On advice of counsel I decline to answer.

Q. I now ask you did I not understand correctly that you have been testifying today as to the manner in which the defendants in this case construe this Act and intend to enforce this Act and have given that testimony in the capacity of their subordinate in charge of matters of construction and enforcement of this Act?

A. I gave the answers, giving the administrative construction that the Bureau of Insurance has placed upon the Act.

Q. Do you say then that I initiated the expressions in your letter of September 9?

A. I would say I just don't recall. I wrote the letter. I do not recall how the expression originated.

[fol. 746] Q. Before you sent that letter to me did you talk to Mr. Bowles or Mr. Fletcher or Mr. Hooker or Mr. Ozlin as to its contents and read it to them, or any of them, and secure their approval of it or the approval of any of them?

A. I don't recall. I probably took it up with Mr. Bowles. I just don't recall.

Q. Would you have had authority in your relations with these defendants to write that letter and deliver it to me without talking to any of them?

A. Yes, I think I would.

Q. Did you ask their permission to come here and testify today or ask the permission of any of them to come here and testify today?

A. I came here today with their knowledge and consent.

Q. Did they know before you came here that you were going to testify as you have about paragraph 16 of the answer?

A. Yes, they knew that I was going to testify.

Q. Did they tell you to do that or did you tell them you proposed to do that and ask their approval of it?

A. The construction was generally discussed at that time and that is the construction that had been put on the Act and it was given with their approval and consent.

Q. Who put that construction on the Act as the prime mover—they or you?

A. It has grown up. That construction has grown up gradually, I will say, over a long period of time.

Q. In whose mind has that construction come to be a fact —theirs or yours or both?

[fol. 747] A. I would say both.

Q. Primarily, however, of yours, would you not say?

A. Of course—the Bureau of Insurance. These questions originate largely in the Bureau of Insurance and matters are discussed with them and we do express opinions.

Q. Are all of these matters of construction about which you have been testifying constructions put forth by you as proper and accepted by them rather than constructions put forth by them as proper and imposed on you?

Mr. Staples: This question and line of examination are objected to as the witness has been introduced for the purpose of proving the facts as to how the statutes are construed and how they will be enforced and that is what the plaintiffs in this case are seeking relief from, as to the soundness of that construction or whether some unconstitutional construction should be placed upon the statute so as to come within the desires of opposing counsel, is question for the court. The Attorney General of the State will seek to maintain the soundness of the construction and that is not the function of this witness. The question of fact now sought to be established is what construction is placed upon the Act, not whether it is sound or not, and I again advise the witness that he need not indulge in an argument of long legal lines with opposing counsel. That is the function, not of his office, but of the Attorney General's office.

By Mr. Christian:

Q. Will the witness please answer the last question or, if he declines to do so, state his declination?

[fol. 748] A. I decline to answer on the advice of counsel.

Q. How many persons hold licenses as Special Agents in the current license year?

A. I don't know. I haven't counted them.

Q. I think you said there were 2,959 persons holding licenses in that year as resident agents?

A. Yes, sir.

Q. Please estimate the number holding licenses as Special Agents, if you can, and if not, go to your office and arm yourself with that information and return and give the evidence.

A. I can get it. I would not like to estimate it.

Q. Is it agreed that you will procure that information and furnish it to the reporter to be a part of the record?

A. I will be glad to do it.

Q. If you will promise to do that, then I am willing to pass it up for the present.

A. I will get it.

[fol. 749] Q. And you will communicate it to the reporter?

A. That is right.

Mr. Christian: It is agreeable to Mr. Staples to be put in the record by the reporter?

Mr. Staples: Yes.

By Mr. Christian:

Q. How many licenses are held by those 2,959 persons?

A. There again I can't answer.

Q. Will you kindly supply that information to the reporter?

A. I can do it. It is going to take some little time.

Mr. Christian: Is it agreeable to counsel that that be furnished to the reporter and incorporated in the record?

Mr. Staples: That is agreeable.

By Mr. Christian:

Q. Will you also find out and put in the record the number of licenses held by the persons who hold licenses as special agents?

A. Yes, sir.

Q. Please say how much of the $9,830,634 of premiums taxed by Virginia, other than fire insurance, life, title and ocean marine insurance companies, is non-cancelable health and accident insurance?

A. I can furnish that later.

Q. Will you please say how many casualty and surety companies were authorized to do one or the other or both lines of business in Virginia in 1937?

A. I can do that later.

Q. Will you please say how many of those were domestic [fol. 750] companies and how many were foreign or alien companies and also say how many were stock companies and how many were mutual companies?

A. I can file that later.

Q. Will you kindly include in your figures a showing of the premiums in addition to those included in the stock figure which I have mentioned for the mutual companies and

divide those mutual figures into domestic mutuals and foreign or alien mutuals?

A. Yes.

Q. Can you show, in stating the number of companies of various kinds holding licenses to conduct a casualty and surety business, or both, which ones have no premiums included in the figures we are discussing except premiums for non-cancelable health and accident insurance?

A. Yes.

Q. I would like you to show the names of these companies, as well as their number, if that is agreeable.

A. I will do that.

Q. Will you kindly also give the names of the companies whose casualty and surety business is limited to one or more of accident, health, and non-cancelable accident and health and which did not return for taxation any premiums in any other lines of casualty and surety business?

A. Yes.

Q. Will you kindly also show the amount of premiums included in your figure of $9,830,634 representing premiums returned for taxation by companies not engaged in any lines of casualty and surety business except accident or health or non-cancelable accident and health or more than one of these three classifications.

A. Yes.

[fol. 751] Q. Is it generally true to say that many companies, who are principally life insurance companies and do not engage in the casualty and surety business except by way of accident and health benefits in their life insurance policies, return the premiums for these benefits for taxation as casualty premiums?

A. It is true that a number of life insurance companies do write accident and health business largely on separate policies which are classified as casualty.

Q. Don't you also include in casualty premium returns the premiums for health and accident benefits which are conferred by riders attached to their life insurance policies and what are known as double indemnity and total disability and other benefits?

A. The double indemnity and total and permanent disability benefits are not included in those casualty figures.

Q. Will you check up on that when you get back to the office and if you find you are incorrect, then make a correction on the record?

A. I will.

Q. In stating these figures will you kindly state what part of the $9,830,634 was returned for taxation by each of the following, viz:

Travelers Insurance Company,
Travelers Indemnity Company,
Fidelity & Casualty Company,
Aetna Casualty and Surety Company,
United States Fidelity & Guaranty Company,
Maryland Casualty Company,
Employers' Liability Assurance Corporation, Ltd.,
New Amsterdam Casualty Company,
Century Indemnity Company.

[fol. 752] A. Yes.

Q. You have given certain fire insurance figures which I do not think material but which Mr. Staples does and I would like you to file data separating the $10,568,780 of fire insurance premiums referred to into the part returned by domestic companies and the part returned by foreign companies. I would also like you to add the amount of fire insurance premiums for mutual companies and divide it into domestic and foreign. In this question where I have used the word "foreign" I mean it to include foreign and alien companies.

A. I will.

Q. On yesterday I believe you testified that the Virginia Statute now in controversy divided and classified into two separate classes or groups agents engaged in Virginia in the business of procuring contracts and agents engaged in the business of assisting and supervising others in procuring contracts?

A. I recall that I did state that agents were divided into two general classes.

Q. And that those were the two classes.

A. And divided generally into the company representatives and resident agents.

Q. Did you not say just what I have stated you said, that the two groups were, (1) a group engaged in the business of procuring contracts and (2) a group assisting and supervising others in procuring those contracts?

A. I do not think I used that expression.

Q. I ask you to point out the words in this Virginia [fol. 753] Statute which have divided and classified into

two separate classes or groups the persons engaged in Virginia in the business of procuring or of assisting and supervising others in procuring the making of certain insurance casualty and surety contracts.

Mr. Staples: I repeat the same advice to the witness with reference to argument with opposing counsel as to the provisions of the statute.

A. On advice of counsel I decline to answer.

Q. I point out to the witness that I am simply cross-examining him to ascertain the basis of a statement he made on examination in chief.

Mr. Staples: I still repeat the advice to the witness.

A. On advice of counsel I decline to answer.

Q. While I have not been aware of making the contention, in behalf of the plaintiffs, that a person may be licensed at one and the same time both as a special agent and as a resident agent, in a remark of counsel, and perhaps in a statement of the witness on examination in chief, it was said that one person could not at one and the same time hold both of these types of licenses. Will the witness point to any regulation or ruling promulgated by the defendants or to any language in the statute on which he based his testimony or his counsel based the statement?

A. I decline to answer on advice of counsel.

Q. Considering my question amended to show you as hav-
[fol. 754] ing testified that one person can not at the same time hold a resident agent's license and a special agent's license to represent one company, will you answer the question?

A. On advice of counsel I decline to answer.

Q. Will you kindly state what person promulgated the construction of this Act where it refers to usual and cus-
[fol. 755] tomary commissions as meaning only a producer's commission and not the large commission provided for in contracts which provide for the payment of a general agent's commission or a regional agent's commission?

A. The ruling was promulgated by the Bureau of Insurance.

Q. And what individuals in that Bureau determined upon the ruling?

A. A letter to that effect was, I believe, written over Mr.

Bowles' signature at the conference with Mr. Bowles and others.

Q. Who wrote the letter?

A. I don't recall.

Q. Did you take part in the conference?

A. I took part in it.

Q. Were any agents there?

A. Probably there were.

Q. Don't you know there were, that the agents came up here and urged that ruling on the Bureau?

A. The agents were interested in that.

Q. And the agents recommended that ruling and construction did they not?

A. Some interested agents did, I think, come in and discuss the matter with Mr. Bowles and myself on numerous occasions.

Q. And they all urged that construction upon you, did they not, and pointed out that another construction might lead to difficulties?

[fol. 756] A. Another construction, of course, might lead to inequalities.

Q. Another construction might also lead to persons, who were only compensated by producers' commission under their contracts with their companies, getting all of their countersigning business instead of these general agents who came to see you getting what they regarded as an adequate share of, might it not?

A. Of course, under another construction it might be that an agent receiving a lower rate of commission would receive more of the business from non-resident brokers, and so on.

Q. Were not these gentlemen who came to see you interested in the matter as general agents, that is to say, persons with general agents' commissions provided to be paid under their contracts rather than persons with no contracts under which they get general agents' commissions on their casualty and surety business.

A. Of course, I cannot say whether they definitely had general agents' contracts or not but in all probability they did.

Q. Did not these persons include among their number representatives of Davenport Insurance Corporation and Tabb, Brockenbrough & Ragland and Gibson, Moore &

Sutton and Boswell & Curtis and Mr. Edmond DeJarnette, or some of them?

A. It included some of them; I don't believe all.

Q. At these conferences about the construction of this Act and the manner in which it should be administered, leading to this construction we have just been discussing [fol. 757] and to the getting out of that letter of June 23, 1938, and the forms therewith, were representatives of the companies present or were representatives of assureds present and participating in the conferences?

A. I don't recall that there were representatives of either the assureds or the companies present, but we would have been glad to discuss this matter with them should they have desired to do so.

Q. Did you call on them to take part in these conferences?

A. I do not recall that we called on either the companies or the assureds to take part.

Q. Did you inform the companies or the assureds that these conferences were being held?

A. I do not believe we did.

Q. Will you kindly say whether it would operate to the disadvantage of people like Tabb and DeJarnette and Boswell and Davenport for you to have given the construction to the words "usual and customary" that they referred to the commission to which the individual agent was entitled for producing a contract for his individual company, instead of giving those words the construction that they only applied to a producer's commission, whatever might be the usual and customary commission that the particular agent usually and customarily received for production from his company?

A. I think that this question could probably be better answered by using an illustration. If we assume that a general agent was actually receiving a commission of 25% and that a producing agent was receiving a commission of [fol. 758] 20% and if, under those circumstances a policy were issued through and countersigned by the general agent receiving 25%, and if the statute were construed to authorize the general agent to pay half of the commission he received, he would be required to retain at least 12½% of the premium, whereas a producer who received only 20% commission would be required, under the same circumstances, to retain only at least 10%.

Q. Does it follow from that that it might ordinarily be expected that most of this countersigning business would go to people compensated only as producers so as that the company, under your illustration, would only have to pay 10% of the premium for the Virginia countersignature?

A. I think in all probability it would tend to refer that business to so-called producing agents.

Q. So the effect of your construction is to enable the general agent to do the signing just as cheap as an agent who only gets a producer's commission could do it?

A. The effect of the construction is to put all of those agents on a parity.

Q. In construing this law for Mr. Staples I understood you to construe it yesterday as permitting a person licensed as a special agent to countersign a contract covering in Virginia, provided the countersignature required by Section 4222 of the Code to be furnished by a person licensed as a resident agent had previously been affixed thereto; is [fol. 759] that correct?

A. I did not use the word "previously". I said as long as it was also countersigned.

Q. What words of this statute are the basis of that construction of the law that you gave to Mr. Staples?

Mr. Staples: I repeat the same advice I have given to the witness with reference to similar questions.

A. On advice of counsel I decline to answer.

Q. When was this ruling promulgated that the word "made" in the first section of Section 4222 means "countersign"?

A. I think that is a construction that has been put on the statute by custom over a good many years and by administrative ruling.

Q. When was this construction about which you testified yesterday that the phrase "duly countersigned" in the second sentence imposes any obligations on the countersigning agent other than to countersign the contract, that is, to affix his name thereto?

A. I think there again there is a question of custom established over a long period of time.

Q. This law was in effect until June 21, 1938?

A. No, but we have had the countersignature law for a good many years.

Q. Will you kindly refer me to any countersignature law [fol. 760] that existed before 1936 and, in this connection, I hand you the Code of Virginia and refer you to Title 38 thereof, entitled "Insurance" and to the notes at the bottom of each section under that title, showing the history of the section.

Mr. Staples: I repeat the same advice I have heretofore given the witness with reference to questions of this type.

A. On advice of counsel I decline to answer.

Q. I call the attention of Mr. Moore to the fact that he [fol. 761] has just finished stating to me that we have had the countersignature law in Virginia, as I understood, for many years and that the question he is refusing now to answer is simply a question designed to find out what law he is talking about. Does the witness still decline to answer?

Mr. Staples: I think the witness' answer as to this legal question is correct and I will undertake to justify the same to the court from a study of the statute but I do not feel it proper for opposing counsel to try to engage a layman, who has never studied law, into an argument and debate as to the legal construction of statutes. I do not think this would be fair to the witness and it certainly would not be enlightening to the court.

A. I decline to answer on the advice of counsel.

Q. Assuming there has been a countersigning law, as the witness claimed there has been for many years, does the witness mean to be understood as claiming that for many years the word "countersign" as contained in Virginia statutes has been the subject-matter of construction by the Insurance Bureau?

A. I do not recall specifically but there undoubtedly have been rulings relating to countersignature over a period of years.

Q. Can the witness point to any ruling ever made, until a time subsequent to conferences between himself and the Attorney General, after the defense of this pending suit became an issue, when the word "countersign" was defined? [fol. 762] A. I do not recall any, but I could not give a definite answer until I look through our files.

Q. Will the witness then include that information in that which he is to furnish to the reporter, along with a copy of the rulings in question, if he finds any?

A. I will look through the rulings.

Note: The Notary subsequently received from the witness certain papers of which the following are copies:

[fol. 763] VIRGINIA

Separate Policy Required on Property in State

Hon. Joseph Button, Ins. Com'r

January 5, 1921.

To All Insurance Companies Transacting Business in Virginia:

All forms of insurance against loss or damage on persons and property located within the boundaries of the State of Virginia shall be issued under a policy which shall be separate and distinct from all insurance which covers persons and property located in any other State. All insurance, whether excess, floater, blanket, general (reporting) cover, schedule, group or any form which has for its object the insurance of risks in the State of Virginia in connection with risks in other States, shall be held to be included under this rule.

The law provides that policies of insurance (life excepted) shall be issued through and countersigned by agents residing in the State. This provision does not apply to railroad companies or other common carriers engaged in interstate commerce.

A company violating this provision of the law subjects itself to the penalty of a fine of not less than one hundred dollars nor more than five hundred dollars for each offense and possible suspension or revocation of its license.

Licensed brokers are not permitted under the law to place insurance in any company or association, or with any firm or person not licensed in this State; nor are licensed agents allowed to divide commissions with non-licensed agents or brokers.

The Bureau bespeaks the co-operation of all interested parties in the enforcement of this law.

[fol. 764] VIRGINIA

Reporting General Cover Contracts

Hon. Joseph Button, Ins. Com'r

(Extract from Letter)

January 10, 1921

(Reply to Inquiry Concerning Ruling Virginia I)

Where it is desirable that risks in Virginia be covered for insurance under the general cover contract form, the general cover contract issued must include property in this State only, and shall have no property located in any other State written in conjunction therewith.

The policies written underlying this contract must be written at the rates applicable to the risks covered as published by the rating bureau of which the insuring company is a member or subscriber. Such policies shall not be made save through regularly constituted agents of such companies residing in the State of Virginia. This department holds that the resident agent law of this state was enacted with the intent and purpose of requiring the companies to do business in this State through resident agents and to procure for these agents their usual compensation and that, therefore, the signature of a contract by an agent without receiving the usual compensation or for a nominal fee is a direct violation of this law. This, of course, does not apply to company employees who receive a fixed salary and bear a certificate of registration as agent from this department.

Policies and forms must never be signed in blank. These signatures should be made only as the actual execution of the contract.

[fol. 765] Virginia

Countersignature

Hon. Joseph Button, Ins., Com'r

(Extract From Letter)

October 7, 1927.

DEAR SIR:

Replying to your letter of October 4th, I beg to advise that all insurance policies issued by a Mutual Insurance Com-

pany must be countersigned by an Agent resident in this State. Section 4222 of the Insurance Laws have been interpreted as requiring countersignature of all policies of insurance except life, and this section is applicable to mutual insurance companies as well, under the provisions of Section 17 of the Mutual Act, Chapter 259, Acts of 1920, page 123 of the Insurance Laws of 1924.

Trusting this to be the information you desire.

By Mr. Christian:

Q. While it is not entirely clear to me what legal opinions you can properly give and what legal opinions you cannot properly give, I understood on your examination in chief that you said, according to the construction of this 1938 Act by the Department, a Virginia resident agent may countersign at the request of a company. In Section 4226a of this Act, I notice a provision that a resident agent or agency may write contracts at the request only of such other resident agent or agencies when such agent or agencies are properly licensed to transact the class of business involved in such exchange and licensed non-resident insurance brokers who may be authorized by law to broker such contracts and I do [fol. 766] not see any exception in that language which says they may write such contracts at the request of their companies or of employees of their companies, in other states, not licensed in Virginia. Will you kindly let me know when this construction, reading into this language the permission to write such contracts at the request of companies and employees in other states not licensed in Virginia, was promulgated?

Mr. Staples: This question is objected to as undertaking to engage the witness in a discussion of the provision of the statute. I will state for the benefit of opposing counsel that the word "only" as quoted by him from the statute is construed by the Department to exclude other types of agents and has no purpose to exclude the company itself. It is intended to restrict the type of agent at whose request a resident agent may countersign a policy. I therefore advise the witness that it is not necessary for him to answer a question predicated upon a lot of legal quotations. If he wants to ask the witness the simple question as to when a ruling was

promulgated, I will advise the witness to answer but I do not think the question should be complicated with a lot of improper matter contained in it.

A. I decline to answer on advice of counsel.

Q. Can you tell me when this ruling was promulgated to which I have referred?

[fol. 767] A. What ruling is it you refer to?

Q. I refer to a ruling which I understood you to say had been made or a construction which I understood you to say had been given of the 1938 Act as permitting resident agents to countersign at the request of a company or of an employee of the company not licensed as an agent in Virginia?

A. I do not know that I can give a specific date but the general construction has been that a resident agent may countersign at the request of the company as long as he receives the full commission.

Q. Has that general construction to which you refer been made before or after the institution of this litigation?

A. That construction, I believe, has been put generally on the law since the 1938 Act has been in effect.

Q. Will you please file a copy of any notice or communication of this construction which has been issued to the agents or the companies, or both, or if there has been no notice given to anyone of the construction, state that fact.

A. I do not believe that any general circular letter has been written.

[fol. 768] Q. Has any kind of a letter been written?

A. It may have been written in individual cases. I don't recall.

Q. Don't you recall it has not been written in any case until after this suit was started?

A. No.

Q. I call on the witness, if he can find any such letter which has been written before this suit was started, to file a copy of it.

A. It seems to me that it would be quite impractical to look through all the correspondence of the Bureau of Insurance to determine that.

Q. I understood you, over my objection yesterday, to swear that the defendants are enforcing this Act in accordance with certain interpretations which are the defendants' interpretations of the Act. One of these interpretations is that when a contract is countersigned by a resident agent the

act of his countersigning the same imposes on him the same obligations with respect to supervising the contents and form of the contract and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff in connection therewith, as customarily applies in cases where the resident agent himself negotiates a similar contract. I ask you does this interpretation presuppose that there are obligations with respect to future services in a case where the resident agent himself negotiates a similar contract?

A. If I understand your question correctly, I feel that [fol. 769] an agent, producing business on his own account, has certain obligations to his policyholders.

Q. Would that be so irrespective of the contract or understanding between the agent and the policyholder?

A. I feel that he would have those obligations under any circumstances.

Q. Even if he had contracted that he was not to have them; is that right?

A. Of course, they might have some agreement but I still feel that an agent has obligations to his policyholder.

Q. Regardless of the agreement or understanding between them?

A. I don't know what effect an agreement of that kind would have upon the relationship.

Q. Is there any statute to which you can point imposing those obligations upon a producing agent?

A. I don't know of any statute which specifically imposes those obligations.

Q. Are there any court decisions to which you can point establishing the fact of the existence of such obligation?

A. I am not informed on the court decisions.

Q. How old are you?

A. 34.

Q. How long have you been with the Insurance Department?

A. Since 1932.

Q. Were you an agent before then?

A. No.

Q. Is your position with the Insurance Department a whole-time position?

[fol. 770] A. Yes.

Q. That is you- only connection with the insurance business?

A. Yes.

Q. When was this interpretation about which we have been discussing as specified in sub-paragraph (b) of paragraph 16 of the answer, placed on this Act?

A. I feel that there again is a matter of custom which has grown up in the insurance business.

Q. Is it not a fact that no such interpretation was placed on this Act except to the extent that you or you and Mr. Bowles agreed to assert its adoption in conference with Mr. Staples within the past few weeks in preparation for you to give this testimony?

A. I do not know that there ever has been a written ruling to that effect, but I feel that the fact has been established by custom.

Q. Leaving out whether there has been a written ruling to that effect, and having reference to whether the occasion had ever come up for an interpretation of the Act in this respect, will you say whether such occasion did arise until Mr. Staples conferred with you, preparatory to giving your testimony?

A. I do not believe that we have had an occasion to issue such a ruling but I still feel that the agent under such circumstances owes that obligation.

Q. Not having reference to issuing rulings, but having reference to whether the matter was discussed at all, I ask you was it discussed at all except when Mr. Staples brought [fol. 771] it up and discussed it with you?

A. I don't recall the question having been discussed.

Q. And when was the first day that it was discussed?

A. Do you mean by that day——

Q. The first day that this interpretation referred to in sub-paragraph (b) was the subject-matter of discussion with any person of the Bureau, as far as you know, or with anybody? I want to know the first day. Was it day before yesterday or the day before that or when?

A. If you mean by that when was the particular wording of paragraph 16 discussed, it was discussed yesterday and I believe the day before.

Q. Not having reference to the particular wording but to the substance of sub-paragraph (b), was its substance ever discussed with anybody until you discussed it with Mr.

Staples before you went on the stand in this case, as far as you know?

A. As far as I know. Of course, I do not know with whom Mr. Staples has discussed this matter. I think we have discussed it with him in the last few days.

Q. And, as far as you know, nobody in the Bureau has discussed the substance of that sub-paragraph until you and Mr. Staples discussed it?

A. As far as I know.

Q. Isn't it a fact then that you have undertaken for the defendants to adopt that interpretation following the conference between you and Mr. Staples?

A. I don't know that that is a fair statement. As I have [fol. 772] stated before, we feel and have felt for a long time that an agent owed obligations to his policyholders as I have already stated.

Q. Have you ever given expression, or have you knowledge of anyone of the personnel connected with the Insurance Bureau giving expression to that interpretation of this Act until you gave it here on the stand?

A. I do not know. Possibly they have. I just do not know.

Q. You know what you yourself have done, don't you?

A. Yes.

Q. Can you say whether you ever gave expression to such interpretation until you gave it here on the stand?

A. I don't recall discussing the matter.

Q. Am I right that it was you and Mr. Staples who had that conference?

A. You mean by that Mr. Staples and I discussed Section (b)?

Q. Yes.

A. The provisions of that sub-section (b) were discussed with Mr. Bowles and myself and with two members of the Corporation Commission.

Q. I ask you to say generally, without imposing an undue burden on you, of trying to speak verbatim, who arranged that appointment and when the appointment was sought, what was declared to be its purpose and what was said by the parties at the conference?

Mr. Staples: This question is objected to and the witness [fol. 773] is advised that he need not answer the question as communications between counsel and representatives of

the State are privileged and not subject to be pried into in this manner. I have no objection to stating, however, that I arranged the conference myself and discussed the matters involved in this suit with the members of the Corporation Commission referred to, Mr. Bowles and Mr. Moore. This, I think, is all that counsel is entitled to have in the record on the subject and I advise the witness not to answer any other questions relating to the interview.

A. I decline to give any further information, as advised by counsel.

Q. Will you please state whether you at that conference expressed your approval of this sub-paragraph (b)?

A. I decline to answer on the advice of counsel.

Q. Will you say whether anybody except Mr. Staples brought up this construction mentioned in sub-paragraph (b) as a proper construction to be given to the Act?

A. I decline to answer on the advice of counsel.

Q. Will you kindly say how a Virginia countersigning agent is to supervise the contents and form of the contract which he is to countersign in the following respects, viz: How is he to know whether the party named as an assured is correctly named?

A. Do I understand you to mean by that whether or not the exact or proper party is named in the policy?

Q. Yes. Richard Roe might be the assured and, in fact, Richard Roe might not want to be the assured and the [fol. 774] policy might insure John Doe. How is the countersigning agent to determine as to whether the policy correctly states the person or firm or corporation who is seeking the insurance information in question?

A. I think that would be up to the countersigning agent to determine just how he would proceed but I still feel that he owes an obligation to the policyholder to review the policy form for correctness and information included in it generally.

Q. In the case of a contract coming to Virginia from California for this required statutory countersignature and which comes directly from a branch office in California or from a general agent or local agent there or from a broker there or from the Home Office of the company, is it your thought that the Virginia countersigner should ascertain the address of the assured named in the contract and write

that assured a letter to make inquiry as to its correct name and whether it wants the insurance?

A. I feel that the exact method used is up to the agent, that he still has his obligation to perform.

By Mr. Christian:

Q. In the supposititious case I cited would you hold that the agent had defaulted in the obligations which you say you construed to rest on him if he assumed that the assured named in the contract when it came to Richmond really wanted the insurance and if he assumed that the name of the assured was correctly stated therein?

A. I decline to answer on the advice of counsel.

[fol. 775] Q. I ask you whether the omission to verify the fact that the named assured wishes insurance and is correctly named in the contract is a breach of duty under this very interpretation which you have said imposes certain obligations upon the agent?

A. I decline to answer on the advice of counsel.

Q. I call your attention to the fact that you have also said in your examination in chief that you are the very person in the Insurance Bureau who handles agents and agency matters and the licensing of agents. Do you still decline to answer?

A. I decline to answer on the advice of counsel.

Q. Leaving aside then the question of whether the assured wants any insurance and whether he is correctly named and proceeding to others of the contents and form of the contract, I ask you under your interpretation of this law, as you have sworn it to be, is the Virginia countersigner to inquire as to whether the amount of insurance provided by the contract is as desired by the assured before he countersigns it or is he to assume its correctness and, in the latter case, will that be deemed by you, as the officer having charge of agency matters and agents and licensing matters, a compliance with his obligation which you say you interpret this Act to impose on him?

A. I decline to answer on the advice of counsel.

Q. Going on with this line of questions, I desire to know whether such an agent has imposed on him, by his assuming the relationship of countersigner to the transaction, the obligation to check up and find out, if a steam-boiler policy [fol. 776] has come to him, whether the assured wants that

kind of policy or a workmen's compensation policy, or some other type, or may he assume that the policy is correct in this respect?

Mr. Staples: I will state that I give the witness the same advice as to the previous question for the reason that the witness has no jurisdiction or authority whatever to either prescribe the specific duties of agents with reference to general cases arising in the line of their business, nor has he any jurisdiction to pass on whether or not an agent has been negligent in the discharge of that duty. His jurisdiction is limited to complaining of an agent if he feels that he has been incompetent in the discharge of his duties, and the witness, in discharging that duty, would necessarily make an investigation of the customs prevailing with reference to similar transactions in any case which might arise. He is not required to have at all times knowledge of all of these customs and doubtless does not have, as he has not had any detailed experience in the business. For that reason I feel it is a wholly unnecessary consumption of time to answer questions of this type which are so absolutely immaterial to the issues in this case and, therefore, I advise the witness not to answer.

A. I decline to answer on the advice of counsel.

[fol. 777] Q. You may have interpreted my questions as calling on you for a mere personal statement and, if there is any objection to the form of the question in that it should have called on you to express the opinion of the Bureau as to the duty of the countersigner in various circumstances which I have suggested in my last few questions, I would like you to interpret my question as calling for an expression of the views of the Bureau rather than your personal ones, if you know those views?

Mr. Staples: I think this is equally objectionable. In fact, I think it would be highly improper for the Bureau to express an opinion in advance of what its attitude might be toward any imaginary case or moot case of violation, or presenting a charge of violation of an agent's duties where the actual case is not presented. It would be just as improper for the Bureau to be placed on record in a moot case of this kind, without having given the matter due and proper consideration, as it would be for a judge of a court to express

in advance what his decision might be in a case which would be presented to the court.

A. I decline to answer on the advice of counsel.

Q. When you had this conference and it was determined that it was in order to adopt the interpretation, among others, referred to in sub-paragraph (b) of paragraph 16, was there any discussion of the extent of the obligation [fol. 778] which paragraph (b) said is imposed on the countersigning agent with reference to supervising the contents and form of the contract to show the limit of that obligation or the field of that supervision?

A. I decline to answer on the advice of counsel.

Q. I will ask you about the producing agent who, in my supposititious case, would be in California. Would you have any difficulty in saying that it was the duty of that party who produced and wrote the contract to be certain before he asks the Virginia countersigner to countersign it that the designated assured desires insurance?

Mr. Staples: The witness is advised to the same effect for the reason that it would be highly improper for the Bureau of Insurance to undertake to express an opinion about the duties of agents in other states.

A. I decline to answer.

Q. Would you, as a representative of the Bureau, or the Bureau, have any doubt about the obligation resting on that producer to cause the assured to be correctly named when he wrote the contract?

A. Same answer.

Q. Would the Bureau have any doubt about the existence of the duty on that producer, if boiler insurance, rather than workmen's compensation insurance is desired by the assured, to see that the policy is written upon a boiler form rather than a workmen's compensation form?

A. The same answer.

[fol. 779] Q. Would the Bureau have any doubt that it was the duty of that producer in writing, or causing the policy to be written, to have the amount of insurance as desired and agreed with the assured?

Mr. Staples: Same advice for the same reason. I confess I am unable to see any possible bearing on this case

of what the Bureau of Insurance in Virginia might think about the duties of an agent in California. It is just an illustration of the ridiculous line into which this examination has embarked.

A. Same answer.

By Mr. Christian: Coming now to your testimony that, as the Bureau interprets this Act, a Virginia countersigner, by his act of countersigning, has imposed on him the same obligations with respect to future services to be rendered during the life of the contract to the assured and to the company as if he had been the producer, I desire to ask some questions on that subject, but if it is the position of the Attorney General that he will advise the witness to answer none of them and if the witness plans to follow that advice and answer none of them, I will forego, for the present, pointing out the ridiculousness of this construction [fol. 780] by demonstrating by questions put to the witness, and his inability to answer them with satisfaction to the defendants' position in this case, the various services which, in many cases, might be rendered to such a California assured which the Virginia countersigner would not be in a position to render without going out to California or conducting correspondence with California.

Mr. Christian: I will ask the Attorney General to state whether he will advise the witness to answer none of these questions and will ask the witness to state whether he will follow that advice.

Mr. Staples: I think it would be highly improper for the witness to undertake to anticipate in advance what the view of the Bureau might be with reference to any specific case which may arise in the future and become the consideration before it of disciplinary action to an agent. For that reason I advise the witness not to answer any questions along this line.

A. And I follow his advice.

Mr. Christian: As there may be some misunderstanding of what I am after, inasmuch as the Attorney General seems to think I am talking about a case of disciplining some particular agent, I will ask one question to illustrate the type of numerous questions which I should ask, provided I could get answers thereto.

Q. I ask the witness to say, in the case of my supposititious California contract, how the Virginia countersigner would proceed to render to the California assured the serv-
[fol. 781] ice of conferring with that assured and advising that assured as to the advisability of changing the insurance contract from the company with which it is made to some other company, constituting, in the opinion of the countersigner, a better company from the standpoint of the assured? Would he write to the California assured or would he go out there and talk to that assured or would he have the assured come to Virginia to discuss it, or how would he go about this?

Mr. Staples: The same advice for the same reason and, in addition, that the question merely puts up a straw man to try to knock him down.

A. I decline to answer on the advice of counsel.

By Mr. Christian:

Q. Would the Bureau consider that the Virginia countersigner had defaulted in the obligations imposed upon him by this Act as construed by the Bureau, if, though holding the view that the contract, in the interest of the assured, had better be with another company, the Virginia countersigner did not serve the assured by making a suggestion accordingly?

Mr. Staples: Same advice for the same reason.

A. Same answer.

By Mr. Christian:

Q. At this conference about which we have been speaking, when it was agreed that you would come here and say that this was the interpretation, which I understand took place day before yesterday, was it not brought out that there were certain services which a producing agent in the locality of production could render conveniently and which
[fol. 782] could not be conveniently rendered by the Virginia countersigner, situated at a distance from the point of production and without any acquaintance with the assured?

Mr. Staples: Same advice.

A. The same answer.

Q. Am I correct as to these solicitors that the law requires that every insurance agent or agency shall file a list of solicitors authorized to solicit in behalf of the agent or agency and that each solicitor is required to secure a certificate of registration from the commission for each company represented by the agent or agency for which he is to solicit contracts?

A. The answer to that is yes.

Q. I ask you to file, as Plaintiff's Exhibits 25 and 26, two statements issued to the press by the defendants Bowles in early November, 1938, on the subject of this law.

A. I do not have copies of any such statements and those statements are not a part of the official records of the Bureau.

Q. Did you attempt, before going on the stand this morning, in accordance with my request to find copies of them?

A. I did make inquiry for them but was not able to locate them.

Q. Did you ask Mr. Bowles for copies of them?

A. I asked Mr. Bowles if he had a copy of them.

Q. And what did he say?

A. Mr. Bowles said that he had a copy of one of the magazines in which one or both—I don't recall—statements appeared at his home but he did not have it at his office.

[fol. 783] Q. I hand you page 8 of the Journal of Commerce and Commercial, New York, of Wednesday, November 9, 1938, and refer you to the two statements of Mr. Bowles as quoted therein and reading as follows:

"1. In view of the position taken by Mr. Bennett, General Counsel for the National Association of Insurance Agents, in his article in the last issue of the American Agency Bulletin, a conference of all parties interested in the Virginia agents law, such as I suggested at Norfolk a few days ago, would, of course, be futile and will not be further pursued, gracefully yielding any preconceived ideas I may have had in the matter to the wisdom and experience of Mr. Bennett."

Do I read that correctly as quoted in this paper?

A. You are reading correctly from the paper.

Q. I now read the second statement as therein quoted and will ask you do I read it correctly.

"It is to be regretted that Mr. Walter H. Bennett, General Counsel for the National Association of Insurance Agents, construed my remarks made before the Norfolk Association of Insurance Agents as being inspired by a feeling of 'irritation.' I can assure him that no such feeling existed but, on the contrary, I was actuated solely by a spirit of sincere cooperation.

"Mr. Bennett's 'message' as he termed it, published in the last issue of the American Agency Bulletin, convinces [fol. 784] me, as Insurance Commissioner of Virginia, that I got out on the wrong limb by sponsoring the agents' bill, since the agents themselves, according to Mr. Bennett, do not know what they want yet. I had been told by the Virginia Agents Association that they did know what they wanted and, acting upon that theory, I used my influence and the influence of this Department to get them what they wanted by appropriate legislation.

"It is to be hoped that Mr. Bennett, as General Counsel of the National Association of Insurance Agents, will be successful in bringing about a meeting of minds before any further agents' laws are introduced in the Virginia Legislature."

Q. Cannot you confirm the fact that what I have read is a true reproduction of the statement issued to the press in November, 1938, of which they purport to be quotations?

A. I can ask Mr. Bowles whether or not they are correct.

Q. Don't you know whether or not they are correct?

A. I assume that they are correct but I have not compared them.

Q. You know that such statements were issued at that time to the press, do you not?

A. Yes, some statements were issued.

Q. Did you take part in the preparation of the statements that were issued?

A. I talked them over with Mr. Bowles. As I recall it, he prepared them himself.

Q. Did you not see them in their final form before they were issued to the press and say you concurred in them?

[fol. 785] A. I saw them in the final form, yes.

Q. I ask you again are not these quotations which I have put in the record correct, as far as you know and believe?

A. As far as I know, they are correct.

Q. If they are not correct you can, when you come back

here to supply this additional information, point out any corrections that should be made in them to make them correct, can you?

A. I can show them to Mr. Bowles and ask him if he has them correct. I don't believe I have a copy to compare them with.

Q. The same statements appeared in the Spectator and in the various insurance magazines which were published at that time, did they not?

A. As I recall it, they appeared in several magazines. I don't know which ones.

Q. And you say that neither you nor Mr. Bowles is able to furnish me any better version of what he said than such a version as this; that is, something that is in a magazine or newspaper? Is that correct?

A. I was not able to locate any this morning.

Q. So that this is the best evidence that you can suggest to me of what he actually said, is it?

A. I know of no other place except in the magazines.

Mr. Christian: I will say I asked this witness about this statement in view of the fact that he seemed to be appearing here as the alter ego of the defendants. I will be glad to pursue the matter with Mr. Bowles if produced as a witness. [fol. 786] In the meantime, I call on the deputy to tell Mr. Bowles of what has been attributed to him and that if there is anything wrong in what has been attributed to him he should come here and be sworn as a witness and correct it.

Mr. Staples: I deny the right of counsel to call on anybody for any such purpose. The evidence he has offered and which has been incorporated into the record will have to stand on its own merits, in my opinion.

Mr. Christian: I will then ask the attorney, it being improper for me, perhaps, to communicate with his client, either to admit that the statements as put in the record were made by Mr. Bowles or to ask Mr. Bowles to step from his office, which is fifty yards away, to this room and give testimony on the subject, Will the attorney produce Mr. Bowles?

Mr. Staples: No, I will not.

Mr. Christian: I ask him to produce Mr. Bowles as witness to disclaim or affirm the correctness of these statements.

Mr. Staples: I have no doubt in the world that the statements are probably correct but I think the matter is so immaterial that I certainly am not going to call on Mr. Bowles to come over here to deny them.

[fol. 787] CHARLES C. CHAPPELL, JR., a witness called on behalf of the plaintiffs, and being first duly sworn, testified in rebuttal as follows:

Examined by Mr. Christian:

Q. Mr. Chappell, will you say what is your occupation?

A. Cashier, Branch office, Travelers Companies, Richmond, Virginia.

Mr. Christian: I exhibit to Mr. Staples, from the files of Mr. Chappell, a copy of a letter dated July 11, 1938, from Tabb, Brockenbrough & Ragland to Travelers Insurance Company, Mutual Building, Richmond, Virginia.

Q. I ask you to read into the record the copy of the letter.

A. "July 11, 1938.

"Travelers Insurance Company,
Mutual Building,
Richmond, Virginia.

"Re: Resident Agent's License.

"Gentlemen:

"In connection with the new law it is necessary for us to license the following employees by reason of the fact that they will sign policies for your Company.

"Kindly secure the necessary license for each of them.

Margaret O. Kettell	W. E. Turner
Mary Jane Cullinan	H. G. Coghill
Robert W. Cole	

[fol. 788] "Yours very truly,

"TABB, BROCKENBROUGH AND RAGLAND;
(Sgnd.) Stuart Ragland. SR/hc."

"(Same letter addressed to The Travelers Indemnity Company and The Travelers Fire Insurance Company. In

the letter to The Travelers Fire Ins. Co. the following were desired to be licensed.

Margaret O. Kettell	W. E. Turner
Mary Jane Cullinan	E. F. Foster
Robert W. Cole	H. G. Coghill.)"

By Mr. Christian:

Q. What is the number of the salaried personnel of the Richmond, Virginia, branch office?

A. 80.

By Mr. Staples:

Q. I believe you have four Field Assistants. What do they do, generally speaking?

A. They appoint agents and assist in the development of the agent's business for the company, soliciting would-be agents and cooperating in any other way possible.

Q. Do any of them solicit business on their own account?

A. No, sir.

Q. Do any of them receive any commissions on business written through your office?

[fol. 789] A. No, sir.

Q. Do any of them receive any commissions on any business solicited at all that you know of?

A. No, sir.

Q. Their primary function is dealing with the agents, is it not, and assisting them in their work?

A. That is true.

Q. This organization which you have just referred to covers all of the Travelers Companies, does it not, instead of just the casualty branch of the business?

A. It covers all of the Travelers Companies.

Q. How many companies are qualified in Virginia?

A. Four. Travelers Insurance Company, Travelers Indemnity Company, Travelers Fire Insurance Company and Charter Oak Fire Insurance Company.

JOHN A. GIBSON, a witness called on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Gibson, state your occupation?

A. State Manager of the Travelers Fire Insurance Company with headquarters in the Richmond, Virginia, Branch Office.

[fol. 790] Mr. Christian: In examining this gentleman as to certain fire contracts, I am limiting my questions to countersignature practices. I am offering the evidence as material with reference thereto and do not waive my contention that customs and obligations in the fire business, in respect of division of commissions, is immaterial upon the issue of the constitutionality of the statute, so far as its impact upon casualty and surety companies is concerned.

Q. Please say what number of fire contracts have been prepared in the branch office in Richmond since June 21, 1938, which have been countersigned by Tabb, Brockenbrough & Ragland?

A. Three.

Q. In how many of these cases has this agency criticized these contracts in any manner or suggested the making of any changes therein or made inquiries as to the propriety of the coverage afforded thereby?

A. None.

Q. On how many fire contracts between January 1, 1938, and June 21, 1938, did this agency receive a ten percent commission where the contracts were produced outside of Virginia and covered in the Richmond vicinity without the [fol. 791] agency countersigning the policies at all or even seeing the policies before they left Richmond in order to be put in process of delivery to the assured?

A. Seven.

Q. Were they the only cases where it received that commission from your company during that period on contracts produced outside of the State?

A. They were.

Q. I go back now to these contracts about which I first asked you since June 21, 1938, and which they countersigned. Are those three contracts the only ones, produced outside of Virginia since June 21, 1938, and issued by your

company, covering in the Richmond vicinity, upon which they have received commissions from your branch office since June 21, 1938?

A. From the company, yes.

Q. You do not mean by this to negative the possibility that unbeknown to you some Travelers agent somewhere else may have himself made a payment of a brokerage to this agency, do you?

A. No, I wouldn't know if he did that.

Q. You are just speaking of allowances by the company as distinguished from producers?

A. That is right.

Q. In these seven cases between January 1, 1938, and June 21, 1938, did this agency ever make a criticism or suggest any change in any of these seven policies?

A. No.

Q. Did they raise any questions as to the propriety of the [fol. 792] coverages?

A. No, sir.

Q. Did they in each case immediately, after you countersigned each policy in this office and sent it off, receive by [fol. 793] way of a daily report, a showing of its contents?

A. They did.

Q. That, I believe, is a copy of the typewritten part of the policy as distinguished from the form?

A. That is really what they call an agent's record, as far as the agency is concerned.

Q. And it does consist of a copy of the typewritten part of the policy?

A. That is right.

Cross-examination.

By Mr. Staples:

Q. As I understand it, your office does not have any record of transactions that occur between your local resident agents and non-resident agents and brokers where they communicate with one another direct? Is that true or not?

A. That is right.

Q. How did these seven contracts happen to go to them direct from your office instead of going through the producer of the business?

A. Those seven contracts were from January 1, 1938, to June 21, 1938. That was before the new law went into

effect. To facilitate matters and assist the agent, we wrote the policies up there and signed them. I had countersigning authority at that time and we just sent them a daily report [fol. 794] and in due course they would get the commission.

Q. Did they get all of the commission or just part of the commission?

A. They would get the appropriate commission.

Q. All of it?

A. Yes, all of the broker's commission.

Q. Who was the producer of that business? Who negotiated it?

A. They were outside brokers.

Q. Didn't they get any of it?

A. Yes, they got their producer's commission up there which would possibly be ten percent and then Tabb, Brockenbrough & Ragland got ten percent.

Q. In other words, they divided?

A. They divided it which is customary. Each of them got ten percent.

Q. But those brokers who happened to negotiate those seven contracts, instead of sending them direct to a Virginia resident agent, requested the company to associate some local agent with them in the transactions; is that the effect of it?

A. It was turned into our Brokers Department in Hartford and they, in turn, requested our office to have a contract issued.

Q. Did you say anything to Tabb, Brockenbrough & Ragland about having these contracts on hand before you countersigned them and sent them back?

A. No, sir.

[fol. 795] Q. What chance would they have to examine them before they were countersigned if they didn't know anything about it?

A. They had a copy of the contract we sent them. Every time we sent them a daily report or an agent's record rather.

Q. But that was after you had already countersigned it and sent it back, wasn't it?

A. That is a fact.

Q. What chance would they have to inspect the contract before you countersigned it if you countersigned it and sent it back before they knew anything about it?

A. They couldn't have had that opportunity but they had the opportunity afterwards.

Q. After the contracts had already gone into effect?

A. That is right. The contracts can be changed, you know.

Q. You only sent them a skeleton part of it?

A. Yes, but it is a copy of the contract. The form is on the agent's record and shows the rate of premium and everything else.

Q. And your company did not make the practice of inviting any assistance from the local agents or anything of that kind prior to this new law?

A. No, we didn't ask Tabb, Brockenbrough & Ragland about it.

[fol. 796] Q. So that if they had done anything about it they would have been more or less butting in on a custom established by the company, wouldn't they?

A. We would have been very glad indeed to have any suggestions. If they felt we could improve the contract, it would be to our advantage.

Q. Why didn't you ask them about it?

A. We couldn't ask them about every case.

Q. Did you ever invite them to make any comments on transactions of that kind or indicate that you would for them to do anything about it?

A. I did not.

Q. Did any officer of your company, so far as you know, ever do that?

A. No, sir.

Q. Why did your company give Tabb, Brockenbrough & Ragland half of the commissions on these seven cases?

A. The only way I could answer that is that it was customary to give the broker's commission on business which you are referring to.

Redirect examination.

By Mr. Christian:

Q. Was this a new custom that was instituted January 1, 1938, in cases like these seven of your attending to the whole transaction here and sending Tabb, Brockenbrough & Ragland the ten percent commission and a copy of the daily report.

A. We have been doing it over a period of years.

Q. Do you have any instructions from your home office with reference to doing it? I don't mean necessarily in-

[fol. 797] structions pertaining to this agency or these seven cases but do you have general regulations under which, in cases like these, you have to give the local agent a ten percent commission?

A. No, I haven't got any specific instructions. In fact, the checks don't come from the Richmond office. They come from the home office.

Q. So that they pay it in Hartford rather than you paying the ten percent here?

A. That is right.

Q. The daily report comes from you and the ten percent goes to them from Hartford?

A. Yes.

Q. Then every time they get the ten percent they are getting it on a policy they never have countersigned or never have seen except through the daily report?

A. That is right.

[fol. 798] Recross-examination.

By Mr. Staples:

Q. You say these seven contracts were sent down here for countersignature?

A. Yes, sir.

Q. Who were they countersigned by?

A. They were countersigned in my name.

Q. Then the resident agent didn't even countersign the contracts, did he?

A. Those seven cases he didn't.

Q. But you did send to that office a skeleton form of the coverage?

A. I did, sir.

Q. What was the purpose in doing that?

A. Because they would have a record of it.

Q. Why did you want them to have a record of it?

A. Because they were going to get the commission on it, the brokerage commission.

Q. Is that the only reason?

A. We don't do overhead writing.

Q. You are not doing overhead writing if it is negotiated by a non-resident broker, are you?

[fol. 799] A. If we have business come here from Hartford and we sign it and don't give any commission to an

agent in Richmond or this vicinity, it certainly would be overhead writing.

Q. You would call that overhead writing if it were in the fire business?

A. In the fire business we would.

Q. In other words, if your company wrote a fire policy which was negotiated through a non-resident broker or agent and you gave the non-resident broker or agent all of the commissions and didn't give any of it to the local agent, you would call that overhead writing, would you?

A. That is the term we use in the fire insurance business.

Q. I still don't understand why it was necessary for you to send to the resident agent's office in Richmond a copy of the coverage contained in a contract merely because you were paying him half of the commission. It seems to me it would be sufficient for that purpose to merely send him a check and say that a policy had been negotiated. Why should you send him a copy of the policy itself?

A. Well, we want him to have notice of the business as soon as possible. It would probably be sixty days before he would get his brokerage check.

Q. You could just write him a letter saying you were crediting him with so much money on a policy that was [fol. 800] written, couldn't you, without sending him a copy of the coverage?

A. I suppose we could have done that.

T. T. Moore, a witness previously called by the defendants, was recalled for further cross examination and testified as follows:

Examined by Mr. Christian:

Q. Mr. Moore, we were speaking about some interpretations of this Act when you were on the stand before which were, as I understand it, first published in the business when you gave your testimony on the stand and had not been published except to the extent that your testimony on the stand constitutes publication of them. Have you sent out any copies of that regulation about the subject-matter of subparagraph (b) of paragraph 16 of the answer since you were on the stand the other day?

A. No.

Q. Has the Department gotten out any regulations under this 1938 Act since it became effective which it did communicate to the business?

A. I don't believe we have, other than any regulations we have already mentioned.

Q. You have supplied me with a copy of a regulation dated August 20, 1938, which I will ask you to read to the Reporter so that he may record it as a part of your testimony.

[fol. 801] A. Commonwealth of Virginia, State Corporation Commission, Bureau of Insurance, Geo. A. Bowles, Commissioner of Insurance, Richmond

August 20, 1938

To the Company Addressed:

The question has arisen as to whether or not it is permissible under the provisions of Section 4222 of the Insurance Laws, as amended, for a properly licensed resident agent to delegate the privilege of countersignature to an office employee by power of attorney.

In our opinion a duly licensed resident agent may delegate to a full time employee of his office only, by power of attorney, the right to countersign such resident agent's name to policies or contracts of insurance or surety requiring such countersignature. We are further of the opinion that a resident agent may not delegate either to another resident agent or to a non-resident broker the authority to countersign a policy or contract of insurance or surety with his signature.

There is, of course, no objection to duly licensed agencies having full time employees of such agencies licensed as resident agents which would automatically carry with it the countersignature privilege.

Very truly yours, Geo. A. Bowles, Commissioner of Insurance.

[fol. 802] Q. Was this sent out concurrently with the date to all the companies affected by the 1938 Act doing business in Virginia?

A. It was. It was sent out to all fire and casualty companies.

Q. Mr. Staples asked me to have you also read a letter you sent to Mr. Cadmus, Manager, Workmen's Compensation Inspection Rating Bureau of Virginia under date of

November 12, 1937, and I ask you to read that to the reporter.

A. Commonwealth of Virginia

Bureau of Insurance

Richmond

November 12, 1937.

Mr. E. E. Cadmus, Manager,
Workmen's Compensation Inspection
Rating Bureau of Virginia,
323 Broad-Grace Arcade
Richmond, Virginia.

DEAR MR. CADMUS:

Replying to your letter of October 18th and supplementing our conversation regarding separate Virginia policies as referred to in certain rulings of this department, I wish to advise that this matter has been discussed with Judge Ozlin of the State Corporation Commission and his opinion is as follows:

A separate and distinct Virginia policy shall be issued to cover all Virginia risks under the Workmen's Compen- [fol. 803] sation Act. If, however, the companies desire to issue out-of-state policies to cover operations in several states, including Virginia, it is necessary that the Virginia coverage be written on a separate Virginia policy or a Virginia schedule or declaration which shall be separate and distinct from the schedule of operations in other states. All such policies, schedules, or declarations of insurance must be written in full compliance with the Resident Agency Laws of the State of Virginia.

As pertaining to the above ruling, a Virginia risk shall be defined as any risk having operations in this State of an extensive or a permanent or semi-permanent nature.

Very truly yours, Geo. A. Bowles, Superintendent of Insurance.

MOS:P.

Q. Under the present practice of the Convention of Insurance Commissioners has it been made a part of the standard practice in conducting examinations that the Examiners of the Insurance Department make the necessary

investigations to determine whether premium tax payments are being correctly allocated and made?

A. It is my understanding—I do not recall the wording of the resolution, but there was a resolution adopted by the National Association of Insurance Commissioners stat-
[fol. 804] ing that the question of taxes should be investigated on examination and that the usual procedure is to make a check of taxes.

Q. You testify that that is a part of the departmental examinations of casualty and surety companies when they are examined by the Insurance Department?

A. It is a part of the Virginia procedure and I assume it is the procedure in other states.

Q. You also know that it is quite the custom, when your department takes part in the examination, instead of making it alone, to do it in association with the departments of other states, do you not?

A. That is correct.

Q. And you know that in those associated examinations it is the custom to make this check, do you not?

A. It is the custom to make the check.

Q. Please state if it is not the practice of insurance companies to maintain a separate file in connection with each separate insurance contract and its various changes from the time it is issued to the time of its expiration?

A. Of course, companies follow different procedures. Ordinarily there is a separate Hollerith card punched, I believe, on each policy as it is written.

Q. And as changes are made in the policy there are changes in the punching of the card, are there not?

A. Sometimes I believe there are and sometimes they
[fol. 805] are corrected by additional cards. The effect would be the same.

Q. Those cards are made up from the data in the file on the policy, are they not?

A. Yes, sir.

Q. And the file on the policy contains the copy of the typewritten part of the policy and of the typewritten changes, does it not?

A. They are ordinarily made from the daily reports.

Q. In making these examinations of the companies, isn't it an entirely usual thing to run off a bunch of cards and see the premium allocation to the various states for tax purposes and then go back to the files and check the Hol-

lerith punching against the files to see whether the cards are correct?

A. Yes, I would say that is the usual procedure.

Q. Tell me, speaking generally, to what extent it is your observation that the companies seem to endeavor or seem not to endeavor and to what extent you think they succeed in any endeavor they may make in properly allocating premiums for tax purposes and making proper payments in the several states?

A. I would hesitate to answer a question of that kind. I think in the past probably some companies have been a great deal more careful than others in reporting premiums for taxation.

Q. When these examinations are made do you, among other things which you achieve by making them, discover and correct errors that have operated against your state?

A. A number of errors have been discovered.

[fol. 806] Q. Do you require their correction?

A. That is true.

Q. And that is the method by which the State of Virginia customarily safeguards its interest in respect of premium taxation, is it not, to discover errors in the course of these examinations and cause them to be corrected?

A. I do not feel that that is the only method of insuring the proper return to the State of Virginia.

[fol. 807] A. I would say that that is one of the methods used.

Q. Has the State of Virginia adopted any practice heretofore of going around to different resident commission agents' offices or branch offices of the companies, as distinguished from their Home Offices, and making checks in order to determine whether the state is getting its proper taxes?

A. It has not.

Q. Have you had in contemplation adopting any practice to go around to agents' offices or branch offices and conducting examinations of their records?

A. We have not contemplated doing it.

Redirect examination.

By Mr. Staples:

Q. Mr. Moore, you spoke of checking the records of these insurance companies. Do you have any other records than

the records of the company against which you can check their correctness?

A. We do not except on occasions, in connection with examinations, we are furnished with premium data showing premiums returned.

Q. Who furnishes you that?

A. The various other Insurance Departments from time to time.

Q. You mean of other states?

[fol. 808] A. In other states when examinations are being made. That is the same thing to which Mr. Christian referred.

Q. But the only source of information which you have under the present laws as to the total premiums written on Virginia coverage by any insurance company consists of that company's own records, does it not?

A. That is correct.

Q. If this 1938 Act is valid and enforced, is it not true that if the law is complied with resident agents of Virginia will have data and information passing through their respective offices which, as a whole, would show the entire amount of premiums written by all of these insurance companies, and each of them, on Virginia coverage?

A. Yes.

Q. Is it not true then that it would be practicable, under those circumstances, for the Insurance Department, by its regulations, if they have the power or, if not, that it be required by appropriate statute to require each of these resident agents to file a report annually with the Insurance Department showing the premiums of each company passing through these respective agents' offices and that the sum total of those reports would reflect the total amount of premiums written by each company in the state during the year covered by the aggregate of these agents' reports?

A. Yes, I think that would be possible and practicable.

[fol. 809] Recross examination.

By Mr. Christian:

Q. You have said that under this 1938 law a Virginia countersigner is required to keep records which would enable the state to check up on its proper receipt of premium

taxes due on the premiums on policies so countersigned by him. I ask you to read into this record, handing you a copy of the 1938 Act, the words of the Act which you think justify your making this statement under oath to the Court as you have done.

A. As I understood the original question, Mr. Staples simply asked me whether or not the various resident agents would have the information from the dailies passing through the office, and so forth, to enable them to make up such a report and I answered that they would, and I do not think that this has anything to do with the laws at all. It is simply a practical matter of whether they could, from the information passing through, compile it.

By Mr. Christian:

Q. What part of the law requires them to have daily reports or other information?

A. If they countersign, as Mr. Staples prefaced his question, his statement being that if the law were complied with, if they were countersigned, the information would certainly obviously pass through their offices.

[fol. 810] Q. Mr. Adair testified on two occasions he took contracts to the office of Davenport Insurance Corporation since this Act became effective and took them out of his pocket when he was talking to a member of that agency at the latter's desk and asked him to countersign the contract, which was immediately done, and the contract was taken away then and there by Mr. Adair for filing in some public office. If Mr. Adair has testified correctly to those transactions, how would Davenport have any record of the kind you speak of?

A. Of course, I don't know what records Davenport made. They may have records and they may not. They could have made them.

Q. Assuming they did not, according to the construction of this law about which you have testified, they haven't violated any Virginia insurance law, have they?

Mr. Staples: That question is objected to for the reason stated in the previous examination. This witness, I think, is not called upon and, in fact, I think it would be highly improper for him to undertake to prejudge in an official capacity and in an ex parte proceeding as a witness whether or not some insurance agent in the state has violated the

statute as that is a question which may come before him in his official capacity and I think he should reserve his decision certainly until the person charged with the violation has an opportunity to be heard.

[fol. 811] A. I decline to answer.

Q. Suppose, having had an intimation from me that Davenport had violated the law, if that is what you think is the effect of my words, and that they should be hauled up, would you have anything to do with judging their case or would that be reserved to Mr. Bowles and the members of the Corporation Commission?

Mr. Staples: This question is also objected to for the same reason as the witness has testified that he has charge of the enforcement of the statute and would certainly have to decide whether he would institute a complaint on the facts laid before him and whether or not, before instituting such a complaint, he would give the party against whom the complaint was made an opportunity to explain the situation if it was so desired, and I don't think this line of examination is at all proper and the witness is advised he does not need to answer the question.

A. I decline to answer on the advice of counsel.

By Mr. Christian:

Q. Leaving that point alone and talking about a sup-
[fol. 812] posititious case of Mr. John Doe, agent, am I to understand from your testimony this morning with reference to agents keeping records when they countersign, and your previous testimony of the constructions placed on this Act, that you assert under those constructions for good reason or bad, it would be a violation of the Act for a countersigning agent not to keep any records?

Mr. Staples: Same advice to the witness.

A. Same answer.

Q. May I ask whether there have been any regulations published to the business or any regulations promulgated in recent conferences between you and the Attorney General which have been kept private between you, or any other regulations saying explicitly whether or not a Virginia countersigner must keep any records?

A. I do not recall that any ruling issued mentioned the question of records.

CHARLES F. GALLAHER, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Gallaher, will you state your position?

A. My position is Assistant Cashier of the Richmond Branch Office of the Travelers.

Q. In your position with the Travelers, please say whether you have knowledge of who countersigns the [fol. 813] casualty contracts which are countersigned in its Richmond branch office?

A. I countersign those or one of my assistants having that authority.

Q. I notice that the Virginia rider, which is a part of Exhibit C, has a countersignature space on it and that the universal policy form itself has a countersignature space on it. Under your practice as now and hitherto followed, both before and since the enactment of this 1938 Act, are both the Virginia rider and the universal policy required to be countersigned?

A. They are.

Q. Is this standard form which I have spoken of as the universal form used nationally in the United States?

A. Yes.

Q. I notice this Virginia rider shows at the top that it is for attachment to the universal policy when applicable in the State of Virginia and down at the bottom it has the symbols "45 = 1788 Virginia". Do similar forms prepared for use in other States, where the state law requires the attachment of such riders to the universal policy, contain similar conspicuous identifying symbols?

A. They do.

Q. Under the regulations of your company would it be [fol. 814] proper or improper, when you are asked to countersign a workmen's compensation policy produced outside of Virginia and covering in Virginia, to sign it if it had a Nevada or California or Maryland rider instead of a Virginia rider attached to it?

A. It would be improper.

Q. Suppose it didn't have any state rider at all attached to it, would it be improper to countersign it or proper, if it covers in Virginia?

A. It would be improper.

Q. How many seconds or minutes or hours or days would it take you to determine whether one of these contracts had a Virginia rider on it or not?

A. I could tell at a glance.

Q. Supposing it had a rider of another state, do you think you would observe that?

A. I would for the reason that each rider contains the symbol number and the name of the state on it.

Q. And that symbol number and name of a state are in much larger type than the body of the rider and appear within half an inch of a place where you have to put your countersigning signature on the rider, don't they?

A. That is true.

Q. Having reference to automobile liability policies, how many forms does Travelers use nationally?

[fol. 815] A. There is a standard form used nationally with various state exceptions. The state exceptions that I recall are Massachusetts, Texas and Iowa.

Q. Are these forms sufficiently conspicuously marked and symboled to enable you to tell at a glance when one of these policies comes from out of the state to your branch office for you to countersign, whether it is the Massachusetts or Iowa or Texas form or whether it is the national form?

A. Yes, sir.

Q. In a general way could the Court get an idea of the opportunity offered you to detect an error in the form by looking at this defendants' Exhibit C? In other words, are there different symbols about as conspicuous as there are on Exhibit C?

A. Yes, sir.

Q. Under your practice and instructions, when such a contract comes here to Virginia for you to countersign, is it proper for you to countersign it if it is a Massachusetts or Iowa or Texas form or, under those circumstances, would there be propriety in your failing to countersign?

A. If I understand your question, we could not countersign one of those forms here with propriety.

Q. Please say whether or not at the present time and for more than two years last past, whenever the Richmond branch office, through yourself or someone else, countersigns a casualty contract, it retains a copy?

[fol. 816] A. We retain a copy.

Q. Please say whether it is true or not that in these cases you also file a copy with the Workmen's Compensation In-

spection Rating Bureau of Virginia if the contract is a workmen's compensation contract and with the Virginia Auto Rating Bureau if the contract is of automobile liability?

A. We are only required to file a copy on workmen's compensation.

Q. Having reference to automobile policies, is there any filing in Virginia of a copy of such a policy when produced outside of the state but countersigned in the Richmond branch office?

A. The Home Office files a copy and not the Richmond branch office.

Q. Within how short a time do they customarily file it? I mean as a matter of days, weeks, months or years?

A. A matter of days.

Q. We have talked about workmen's compensation forms and automobile forms. What does the symbol FA on your company's form stand for?

A. That stands for a policy written in the Indemnity Company, affording public liability and property damage insurance.

Q. What does the symbol MC stand for?

A. MC stands for a policy written in the Travelers Indemnity and Travelers Fire Insurance Company in which [fol. 817] we afford combination coverage, consisting of public liability, property damage and comprehensive coverages.

Q. What does MV mean?

A. MV is similar to the MC and that is written in the Indemnity Company and the Fire Company, affording combination of coverage involving public liability, property damage and comprehensive. You want me to explain what I mean by "comprehensive"?

Q. You spoke of comprehensive as designated by the symbol MC and I think you also used the word "comprehensive" in connection with MV. I want you to explain that.

A. MV is public liability, property damage, and specific peril coverage.

Q. In the other lines of casualty insurance business are the forms designated similarly by symbols appearing conspicuously?

A. All policies, with the exception of the boiler and machinery policies, no symbol, if I remember correctly, appearing on that contract.

Q. That is a copyrighted deWindt form that all the companies use nationally, is it not?

A. That is true.

Q. Which has been introduced as Defendants' Exhibit D?

A. That is correct.

[fol. 818] Q. Would it be fair to say that in the cases of these various other forms it is easily practicable to tell at a glance whether the correct form is used, as you have indicated you thought it to be, in connection with the workmen's compensation form?

A. Yes.

Q. Please say whether, when there is need for a policy change requiring countersignature, and the Richmond branch office furnishes the signature, copies are provided, retained and disposed of as you have said was true as to original policies?

A. They are.

Q. Can you say whether the Workmen's Compensation Bureau, as a matter of fact, does have a survey department which verifies the correctness or incorrectness of classifications?

A. They do have.

Q. Do you see that person in that department and talk to him or is that just an idea of yours that they do that?

A. I know they do because we from time to time see criticisms on our policies, which criticisms are based on these surveys made by an engineer of the Bureau.

Q. And they tell you when they make the criticism that their engineer has gone and inspected the risk and found the classifications are wrong or else raised a doubt as to the correctness of the classifications which they want you to explain; is that right?

[fol. 819] A. That is right.

Q. Under whose supervision are the casualty contracts which are prepared and issued at the Richmond branch office of the Travelers so prepared and issued?

A. Under my supervision on casualty insurance.

Q. Are you sufficiently acquainted with the processes of the preparation and issuance of similar contracts by agents or agencies, licensed as Virginia resident agents or agencies, to be able to say whether they follow or do not follow the

same methods in respect of the preparation and issuance of these contracts as are followed by you?

A. I can only speak for those agents writing policies for the Travelers, which agents report through this office. I am in a position to say that they have to follow the same procedure that we follow if the policy were issued in our office.

Q. Why is that?

A. All policies must be prepared on the same form and in the same manner that we are required to prepare them.

Q. Are they supplied with the same order forms for the producer to turn over to the policy writer that the office agents of your branch here are supplied with?

A. They are supplied with those forms.

Q. Will you please describe how, if I sold somebody a contract and I am one of your office agents, under my [fol. 820] supposition, and I want to get the policy issued, how I go about it?

A. From the standpoint of the branch office, the agent is required to file a completed application, signed by the agent, from which application we prepare the policy.

Q. When the producer signs one of those forms, what does he do with it?

A. He either mails it to the Richmond branch office or hands it across the counter, if he is in the branch office.

Q. And who is the first man it comes to after it gets into the Richmond branch office across the counter or by mail?

A. I turn it over to one of my assistants for rating and checking.

Q. Does it sometimes happen that the producer, instead of using the appropriate form, will just go to the counter and undertake to state verbally what he wants?

A. That has happened. When a branch office agent turns in an order in that way we require him to complete an application because we are right there on the spot and turn the proper form over to him for completion, but when an order comes in, say, a letter from an out-of-town producer, he may or may not have all the necessary information. In that case we either send an application to be completed or ask specific questions to complete an application in our office.

[fol. 821] Q. And then you add the information originally given you to the additional information received as a result of your inquiry and make up a form like that in this office?

A. We do.

Q. If the order comes in not on the proper form but by letter, does your assistant underwriter write that letter requesting the additional information if additional information is needed, or do you do that?

A. It all depends on the type of policy and the fact that the assistant may or may not know enough about the business to write an appropriate letter.

Q. If he feels sure that he can write an appropriate letter, he will do it or, if not, he will take it up with you?

A. That is right.

Q. Who prepares those forms in a case where the form has not been used? Does the assistant underwriter handling the case prepare that?

A. He prepares it, yes, sir.

Q. After the order has been checked and necessarily corrected or supplemented to make it complete, does it then contain adequate data to enable somebody, by the use of that form, to know how to write the policy?

A. If the application is completed in its entirety, the policy writer can prepare a policy from that information.

[fol. 822] Q. Before this form goes to the policy writer does anybody fill in that branch office approval blank?

A. Before the application is turned over to the policy writer my initials must be put in the branch office approval space and I put it in myself.

Q. And there would already have been noted in the endorsement space a notation of any endorsements that go on the policy when it gets to the policy writer; is that correct?

A. That is correct.

Q. Supposing that you don't want to write that contract that is ordered by me as a producer, what do you do?

A. Write a letter to the producer declining it.

Q. Does that sometimes occur?

A. Yes, sir.

Q. Do you ever offer him alternative policies or a somewhat different form or at somewhat higher than ordinary cost?

A. We do.

Q. Do you ever take the liberty to suggest that what he proposes in his order is not the most efficient or economical thing to the assured and that he consider some change in what he has ordered, or are they usually orders of appropriate coverages?

A. It would be pretty hard to answer for the simple reason that those agents who have a detailed knowledge of the [fol. 823] business will take orders on the appropriate basis. Other agents, not being familiar with the insurance business, may sell an order that isn't as good as might be had. What I mean to say is that all agents can't be classed the same as far as their knowledge of the business is concerned.

Q. Do you leave it to them as the producer or do you undertake to suggest a change?

A. If we find an order comes in and we can better the coverage, we suggest the alternative at the time we issue the policy.

Q. Do you ever write back when one of these agents orders a policy for a man named Bill Smith and ask him to make an affidavit that that is the correct name of that man or do you ever ask him for Bill Smith's address so you can write Bill Smith and ask him if Bill is really his name?

A. No, we never have occasion to do that. The only exception that might be considered an exception would be on automobile insurance. We make an outside investigation through an outside reporting company and if that company cannot identify this particular policyholder we write to the producer for further means of identification, the business address or confirmation of his residence address.

Q. When this order form with your O. K. on it goes to the policy writer, what does the policy writer do?

[fol. 824] A. He takes the form and stubs the blank policy. By that I mean we have blank policies which have stubs and certain information is inserted on the stub to indicate that that particular policy has been used. He takes the policy and multiple copies of the proposals or dailies and issues the policy from the information contained in the application.

Q. And the stub is retained for the same purpose as I would retain a check stub perhaps?

A. That is right.

Q. What does a policy writer ordinarily receive by way of compensation?

A. We have two policy writers and we pay them $80 each per month.

Q. Do they have at hand, where they can select appropriate forms from among the whole group of forms, stocks of all the forms which they need in writing the policy?

A. We have a complete supply of all forms.

Q. Do those policy writers make the selection of the form to be used?

A. They select the form to be used from this supply, which form is indicated on the application. The man handling the application will insert the policy form in the lefthand corner so they will know which form to use.

Q. How many policies will one of these policy writers write a day on the average, working full time, seven hours?

A. I would say twenty.

[fol. 825] Q. What does a person, who falls into the classification of one of these assistant underwriters, ordinarily receive in the way of salary?

A. Our starting salary is $150 a month.

Q. Among the people working under you, do some of them get substantially more than $150?

A. Yes.

Q. They get up to what?

A. It depends on the length of time with the company and his ability. We have no limit.

Q. What is the highest priced assistant underwriter under you? What is he paid?

A. $2400 a year.

Q. So yours, it would be fair to say, receive a compensation of $150 to $200 a month?

A. That is in this office.

Q. How many of these orders from producers can one of these men be reasonably expected to handle in a day?

A. That is a question that can't be answered from my knowledge. One application may take him all day.

Q. I am talking about the average day?

A. Anything I would say would be a matter of conjecture. He should be able to handle sixty a day.

Q. How many of those people do you have in your office under you?

A. Four beside myself.

[fol. 826] Q. And you are called in in difficult cases to assist them sometimes, aren't you?

A. That is true.

Q. But, as I understand, nowhere near the full time of yourself is employed in assisting those four, is it? Don't you have other duties than to assist them?

A. Yes.

Q. How much of your time is taken up assisting them—a great part or small part?

A. A great part because I have two men in training.

Q. What happens to a policy after the policy writer writes it?

A. It is checked by a checker.

Q. And who is the checker—you or one of your assistants or somebody else?

A. We have a girl checking policies at the present time and one of the men may check a policy occasionally.

Q. But this girl's principal occupation is checking policies, is it?

A. Among other things, yes.

Q. In an agency office or agent's office is it customary for that agent himself to deal directly with the policy writer or is there somebody between them such as you are between the producer and the policy writer in your office?

[fol. 827] A. The few agents I have visited usually have one or two girls in the office and the contact is between the agent and the girl who would ordinarily issue policies if they were called upon to do so.

Q. I suppose, however, in an important establishment like Tabb, Broekenbrough & Ragland they might have some supervising girl or some person coming between the producer and the actual writer of the policy, might they not?

A. Yes.

Q. Having reference to these Travelers agents which you said were the only ones whose practices you knew about, do they have young ladies in their offices to write these policies who are compensated about as yours are or would you say that their young ladies on the average are compensated at greater or lesser rate than yours are?

A. I would say on the average they would pay about the same salaries we would pay.

Q. How many cases out of one hundred policies, ordered to be written by your producers, written as you have described, and checked as you have described and returned to the producer in accordance with his order, does your producer have occasion to ask you to make the revision or correction of the policy because of errors therein which he claims have been caused by mistakes in your office?

A. Those occasions would be few. I would say one per-cent.

[fol. 828] Q. In those cases do you make a check to find out whether his blaming the thing on you was justified or whether, even though he blames it on you, the trouble came from some defect in the order?

A. Yes, sir.

Q. Do you usually find that where he claims it is your mistake, in fact it is your mistake or do you usually find the contrary?

A. We sometimes find it is our mistake. We more often find that the agent didn't supply sufficient information.

Cross-examination.

By Mr. Staples:

Q. Are your duties, Mr. Gallaher, confined principally to the office or do you go outside of the office in the discharge of your duties, such as traveling over the state?

A. My duties are principally confined to the office and do not require traveling over the state.

Q. The office of the Travelers, as I understand it, in Virginia, has established the practice of writing most of the policies procured by its agents in the state, hasn't it?

A. That is the practice.

Q. Do you know anything about the practice of companies that don't have branch offices in Virginia?

A. Only in a limited way because of my confinement to the branch.

Q. Most of the resident agents have authority to issue policies themselves, don't they, with most companies?

[fol. 829] A. We give authority on automobile policies. I don't know. I can't speak for the other companies.

Q. So that what you have testified to is simply confined to the Travelers Company and you don't undertake to testify as to any general custom or practice in the state along that line at all, do you?

A. I do not.

Q. Do you examine all the policies to see that they are done correctly?

A. We have a policy checker for that who is qualified to do that work.

Q. How much does the policy checker get?

A. She makes $100 a month.

Q. What is the custom of your office with reference to casualty insurance policies which have to be countersigned by local resident agents?

A. Policies are sent to us for countersignature purposes but they are done by salaried employees and we maintain a copy of each policy and forward the original to the agent or branch office that has the controlling interest in the policy. [fol. 830] Q. Questions which arise in relation to classification of risks, about which you testified that criticisms had been received from one of the Bureaus of the State, are handled in what manner in this branch office and by what section of the division personnel?

A. All criticisms emanating from the Bureau are referred to me personally. We check our records to determine whether the Bureau is right or we are correct. If there is any difference of opinion we try to iron it out with the Bureau (I am speaking of compensation now) by having our engineer check up on the point at issue if it is an engineering problem, such as classification of the risk, or have our auditing department check up on it because it may be a question of the pay roll and division of the pay roll. In this manner we arrive at some conclusion as to which is correct and which is not correct.

Q. What kind of cases were they that the Bureau complained of?

A. Compensation cases that were on our books that we have issued and they had gone out and made surveys and found that we have misclassified it.

A. We inspect some risks before we issue the policies and the majority of them we issue the policies before we inspect them.

Q. Which are the ones you inspect—those involving pretty large risks?

A. Hazardous classifications such as quarries and sawmill risks. We inspect those before we approve the policies. [fol. 831] Q. Why do you inspect these risks instead of relying on the producing agent if the producing agent is on the ground and able to examine the risk and analyze it?

A. We feel that producer isn't qualified as an engineer to determine the physical hazards surrounding any risks of that type.

Q. Suppose the producer is a New York broker, do you inspect that risk before you write it?

A. I do not have jurisdiction over the risks written by a New York broker and, therefore, I do not know what procedure they follow in that office.

Q. They don't come through your office at all?

A. We don't receive the inspection requests or issue such requests from this office on any business written outside of the state.

Q. You don't prepare those policies in your office, do you?

A. We do not.

Q. And when you countersign them, as you say, it has been your custom not to bother yourself about the risk at all as to whether it is proper underwriting or whether the policy is properly prepared or anything of that kind but you trust that to the Home Office; is that correct?

A. The only thing that we are concerned about is countersigning of policy and to see that the State endorsement is attached to that policy if it is compensation and if any [fol. 832] blank endorsements are attached showing countersignature space we have to insert the countersignature in those spaces.

Q. What examination do you make to determine the correctness of the coverage or anything of that kind?

A. We make no examination.

Q. You state then when you do countersign these policies the only examination you make is to determine whether it is a Virginia form and, if it is a Virginia form, you countersign in the places where it is provided that such a countersignature should appear; is that correct?

A. That is correct.

Redirect examination.

By Mr. Christian:

Q. You have described the procedure in the Richmond branch office by which producing agents, whether office agents or other resident commission agents around the state order the writing of policies and the method by which they are written and checked and delivered to the producer in response to his order. Can you say whether the procedure in this office in these respects is or is not regulated by a general manual of regulations and instructions which govern the similar activities of similar departments to yours in the various other branch offices of the United States?

A. I can only speak for those offices I have been in and in all of those offices we follow practically the same pro-
[fol. 833] cedure in handling casualty business.

Q. And if I am a policy writer or assistant underwriter or underwriter or cashier in the Richmond branch office, is it your view, with your knowledge of your company's operations, that if they want to transfer me to the New York branch office or the Washington office and give me the same job there that I could hang up my coat and go to work without having to find out what my duties were?

A. That is true, if you were transferred in the same capacity.

Q. Then the various jobs are under the same classifications throughout the branch office system of the Travelers throughout the country, aren't they?

A. According to my knowledge, they are.

Q. You are qualifying your answer as to offices you have been in and as far as your knowledge goes. I am trying to get at whether or not they don't have regulations of all of those matters that are printed and distributed and, from time to time, amended and supplemented that go coutnry-wide through these offices of which yours is just one? Isn't is all uniform?

A. As a general thing, yes.

Q. To be perfectly specific about where this business is produced which you write in the Richmond branch office, am I right that the business which you write in the Rich-
[fol. 834] mond branch office is business produced in Virginia?

A. That is business produced in Virginia.

Q. And it is not any business produced outside of Virginia, what you are writing?

A. You mean that we write in the branch office?

Q. Yes.

A. That is right.

William H. Osborn, one of the plaintiffs, being first duly sworn, testified in rebuttal as follows:

Examined by Mr. Christian:

Q. Mr. Osborn, are you familiar as the Richmond Branch Manager of the Aetna Casualty & Surety Company, with

the organization and personnel and the objects, and methods of carrying out those objects, of the Engineering Department and of the Claim Department of your company as maintained in the State of Virginia?

A. Yes, sir, I am.

Q. What would you say was the fact that the organization and personnel and objects and methods of carrying out those objects of the Engineering and Claim Departments of the Aetna as maintained in Virginia and of the Travelers Insurance Company as maintained in Virginia and of other leading companies as maintained in Virginia being generally similar or generally dissimilar? In those respects where you think they are dissimilar, if there are [fol. 835] any, I would like you to state the points of dissimilarity?

A. Well, I would say that the Inspection, Engineering and Claim Departments of the various companies are pretty much on a par. Of course, the number of the personnel varies in accordance with the line of business that the respective companies are doing in the territory. For example, some companies might locate their Inspector in another State. However, he is available to handle the risks in his territory and is merely located in another territory because that particular company doesn't have sufficient risks to warrant the maintenance of a full-time man in the territory. Aside from that, I don't believe that there is a great deal of difference in the Inspection and Engineering Departments.

Q. What about the Claim Departments?

A. I would say that the same thing is true all along with the Claim Departments.

Q. What would you say on this point where a man maintains his office in Baltimore or Washington or Charlotte in conducting the Claim Department work of the company or Inspection or Engineering Department work of the company in Virginia? Is he usually a man who, in addition to having jurisdiction in Virginia, has it in Maryland or the District of Columbia or North Carolina or is he just some part-time employee who does part-time claim work or part-time engineering and inspection work and the rest of his [fol. 836] time is selling insurance or practicing law or doing something of that sort?

A. No, the Inspectors, Engineers, and Claim men are always full-time salaried company employees, just as we are. It is simply that their risks are spread over a wider territory that might cause their not being located in Richmond, Virginia.

Q. As far as the six or eight companies that you would call the leading casualty companies are concerned, do they all have engineering and claim personnel in Richmond?

A. Yes.

Q. How many people are there in your engineering or inspection departments with headquarters in Richmond or elsewhere in Virginia?

A. One. I would like to qualify that. We have one man located here and he receives assistance when his work piles up from a special man from the Home Office. In other words, we don't have quite enough work for two men to be located here.

Q. Do you have any men located elsewhere in Virginia?

A. No.

Q. Do you have any in the District of Columbia?

A. Yes.

Q. How many claim people do you have located in Virginia and where are they located?

A. Our head Claim Office is in Richmond with the head adjuster and three adjusters under him. We have another Claim Office in Norfolk with one man there. We have a [fol. 837] third Claim Office in Roanoke with two men there.

Q. Have you made a special investigation recently to ascertain whether the Employers Liability Assurance Corporation has any salaried claim people with headquarters in Virginia?

A. Yes, I did.

Q. Have you made any investigation recently to see whether they have any salaried engineering people with headquarters in Virginia?

A. I did.

Q. Did your investigation consist of asking the Employers Liability local authorities what were the facts?

A. I called Mr. Farnville who is the salaried field representative of the Employers and asked him the number of claim salaried men they had in this territory. He advised me that they had two salaried men located in Richmond, [fol. 838] one in Norfolk, and one in Lynchburg. He stated

further that they had a salaried engineer and inspector located in Richmond; furthermore, that they have two engineers in North Carolina and one of these serves a part of Virginia territory.

Q. I make the same inquiry as to the New Amsterdam Casualty Company and whether it maintains any salaried engineering personnel or claim personnel, or both, in Richmond?

A. In this case I called either Mr. Boswell or Mr. Curtis, the New Amsterdam agents, and they advised me that they had two salaried men in Richmond, also an engineer in Richmond.

Q. How many Aetna agents are there in Virginia working on a commission basis?

A. In the neighborhood of 120.

Q. How many in Richmond?

A. Between 12 and 15.

Q. How many salaried agents are there in Virginia?

A. I will say a half dozen all together.

Q. How many of your commission agents in Virginia write contracts for casualty insurance in their own offices instead of being required to send them into the Branch Office to be written, in percentage?

A. Possibly ten percent.

Q. Will you please describe the procedure by which, when producing agents in Virginia produce contracts of casualty and surety covering in Virginia which are to be written in [fol. 839] your Branch Office, the contracts come to be written and how they are written and checked, and so forth?

A. Well, in the case of agents not located in Virginia they mail the orders for business to us.

Q. Do you mean to say not located in Virginia?

A. Not located in Richmond. Where the agent is located out of Richmond the usual procedure is for him to mail the order to us and it is generally on an application form which we have provided him with.

Q. When the agent is located in Richmond how does the matter work?

A. In the case of the Richmond agent he usually hands his order for the coverage to one of our Underwriters, and the Underwriter takes the application, checks it as to rate, makes certain that all the necessary information is set forth on it and then the application is placed in the hands of a

policywriter who writes up the policy. After the policy has been written it goes to what we call the head policywriter or checker and she checks it as to correctness and it then goes to the Cashier or Billing Department where it is properly billed and sent to the agent who originated it.

Q. Under the present operation of your company, is it countersigned before you send it to the producer or do you return it uncountersigned for him to countersign?

[fol. 840] A. We return it to the producer for his countersignature.

Q. What is your estimate of a day's task for one of those policywriters?

A. An average number of policies written by a policywriter in our office is 5,514 in a year. That is in the neighborhood of 20 a day.

Q. How many applications or orders for policies does one of these Underwriters handle in a day, on the average?

A. By that you mean if they did nothing else?

A. An Underwriter can pass on 75 or 100 risks in a day's time.

Q. What do you pay these Underwriters on the average?

A. We start them at approximately $100 a month and they range from there up to $3800.

Q. What do you pay the policywriters?

A. We start them at $65 a month. I would say $75 is an average salary.

Q. In your business do you have to go about into the offices of various agents working on a commission basis and licensed as resident agents in Virginia?

A. Yes.

Q. Are they in many cases agents of other companies than your own?

A. Yes.

Q. Do you ever go into Davenport Insurance Corporation's office?

[fol. 841] A. Yes.

Q. Do you ever go in Tabb, Brockenbrough & Ragland's office?

A. Yes.

Q. Do you ever go in Lunsford' office in Roanoke or Yancey's office in Harrisonburg?

A. I have never been in either of those offices.

Q. Do you go in any offices in Roanoke or Harrisonburg?

A. Yes.

Q. Which ones?

A. The only agency office in Harrisonburg is our own which is Sam Perkins and in Roanoke our two agencies there, McClannahan & Company and Preston Brumfield.

Q. In those offices do they use these order forms of which we have been talking, or application forms?

A. Yes.

Q. Do they have girls that write policies from the order forms?

A. Those are Aetna agents who send their policies to us to be written. They have girls that write fire policies in their office.

Q. Do you know whether the girls write casualty policies of other companies than your own which these agents represent?

A. Those agents only represent us.

Q. That is not so of Davenport?

[fol. 842] A. No.

Q. Does Davenport have a girl to write policies for other casualty companies?

A. Yes.

Q. Are you, in a general way, able to say whether, between the licensed resident agents in those offices and the girl, there are people not licensed as agents who are Underwriters or is the contact in those places directly between the licensed agent and the policywriters?

A. I would say that the contact is between the licensed agent and the policywriters.

Q. With that exception would you say that the mechanics of policywriting in those agencies is like it is in your branch office, or would you say that there are other differences between policywriting in those offices and your office?

A. With that exception I will say that the procedure is approximately the same.

Q. Is it a usual thing or a thing you would consider quite unusual for one of your producers to send back a policy to your office because of an alleged error on the part of your office in the writing of the policy and ask you to change it?

A. Well, of course, it has happened but it is an unusual thing.

[fol. 843] Q. Please state what is the average premium on contracts written in your office, classifying the contracts as far as you are able?

A. The average premium on casualty written in our office, which includes accident and health but does not include fidelity, surety and forgery, is $43.15. I arrived at this figure by taking the total number of policies written and dividing it into the total premium volume for the year 1938.

Q. Have you a similar figure on the fidelity, surety, and forgery business?

A. Yes, on fidelity our average premium is $83.25, on surety it is $51.37.

Q. Please state the average life of each contract written in your office, counting each renewal as a new contract?

A. The average life, as we figured it, is eleven months and twenty-four days.

Q. What classes of insurance do those contracts include?

A. They include the casualty lines that we write in our office, including accident and health.

Q. What is the difference between accident and health and other casualty lines with respect to the terms of the contracts?

A. As a rule casualty, other than accident and health, is written on an annual basis or a three-year basis. On accident and health an agent has the privilege of writing it on a quarterly basis, semi-annual basis or annual basis. [fol. 844] Q. Would the average Virginia resident agent, in your opinion as an expert, produce contracts about in conformity, as to the average premium, with those written in your office?

A. Yes.

Q. If he wrote accident and health insurance would his casualty contracts have a term in general conformity, in your opinion, with those written in your office?

A. Yes.

Q. Is any effort made by you, when you take on a new Virginia resident commission agent, or are engaged in assisting an old one, to get him to employ his time intelligently?

A. Yes.

Q. Is that generally true of casualty field men like yourself?

A. Yes.

Q. What does such a man usually specify to an agent as being an intelligent spending of the agent's time?

A. To devote his time to the production of casualty and surety lines and make contacts for new business.

Q. What does such a man specify as to the necessity for servicing business then on the agent's books or subsequently acquired by the agent? Does he tell him it is necessary to service it or not necessary to service it?

A. We, of course, tell him that it is necessary for him to service the risk that he sells and acquaint him with the [fol. 845] facilities that we have for that purpose.

Q. Do you inform him as to how he should proceed in order to secure the use of those means?

A. Yes.

Q. What are those means generally?

A. Well, we instruct the agent that in case the assured has a claim to have the assured complete a loss report and if he can't do it himself to assist him in completing that report and then transcribe that to the Claim Department of our company for proper disposition. In the case of risks that involve inspection and engineering service, we acquaint the agent with the fact that we have an inspection and engineering department and instruct him in general as to the procedure they follow in the inspection of risks. The same is true of the payroll auditors.

Q. What percentage of the time of the average Virginia resident commission agent would you estimate he would spend either in rendering some service himself on his existing contracts or in securing the rendition of that service from the service departments of the company.

A. Well, there are many types of contracts which an agent spends very little, if any, time in servicing. On the other hand, there are others that do require time on the agent's part. I will say that on the average an agent would spend ten per cent of his time in servicing his policyholders. [fol. 846] Q. Does that include the time spent in procuring services to them of the company's service departments?

A. Yes.

Q. I want to know how many office agents you have in your office working on a commission basis?

A. Ten.

Q. Are all of these men licensed as resident agents?

A. Yes, sir.

Q. How often do you talk to those men?

A. You mean as a group or as individuals?

A. In any way.

A. I see them every day.

Q. Is it part of your duty to confer with them and assist them in all of their efforts as agents?

A. Oh, yes.

Q. Do you have opportunities in those contacts of forming a conclusion and receive knowledge as to how much of their time is spent in servicing activity and how much time is spent in other activities?

A. Yes.

Q. Is your answer based on that information among other information?

A. Well, it is based on that as well as my opportunity to be associated with agents throughout the whole territory under our supervision.

Q. Is it a part of the duty of a casualty field man to secure new agents for his company?

[fol. 847]. A. Yes.

Q. In doing so is he supposed to try to procure as agents for his company persons presently acting as agents for other casualty companies or is he prohibited from soliciting persons who are acting as agents for other companies to become his agent?

A. No, we are very active in soliciting agents of other companies.

Q. Do you make such efforts?

A. Yes.

Q. Please say whether, in the course of your efforts to procure agents to terminate their contracts with other companies and make agency contracts with your company, it often happens that they object on the ground that they do not want to give up the service facilities of the company that they are presently representing?

A. Yes, that happens.

Q. Do you ever have these people express an unwillingness to give up the claim and engineering service of the company they are then representing?

A. Yes.

Q. Do you find you are always able to convince such prospective agents that the claim and engineering services of your company are better than the claims and engineering services of the company they presently represent?

A. Unfortunately, no.

[fol. 848] Q. In such cases do you tell these prospects the nature of the services that your departments render?

A. Yes.

Q. Do they ever undertake to compare the services of similar departments of their company with the services you represent are made available by the departments of your company?

A. Yes, they will usually say that they consider that possibly ours is as good as what they are receiving but they are acquainted with the personnel of their present company and that is a stock reason for not making the change.

Q. How many separate contracts on the average would you say would result from 100 solicitations by a commission agent of persons not then his customers to place with him casualty or surety contracts.

A. I would say between 8 and 10.

Q. Suppose an agent is soliciting new contracts from prospects who are people who have already placed one or more contracts with him which are in effect, how many new contracts ought he to get out of a hundred solicitations of people of that type?

A. Well, we drive home to our agents that the best prospects for additional lines are existing policyholders and I would say, including present policyholders, the average sales per hundred would be greater, estimated at fifteen.

[fol. 849] Q. If an agent gets 100 contracts on his books with an average life of one year, or thereabouts, as you have stated it to be, including the accident and health contracts, what is the average expectancy of the length of time he would keep such items of business in his agency by means of the original contracts and the renewals thereof?

A. Four years.

Q. Then, if I put 100 policies on my books today you would expect half of them to be gone at the end of four years and all of them to be gone at the end of eight years; is that correct?

A. That is right.

Q. How much of the gross income of an agency is ordinarily expended in the payment of expenses of all kinds and how much is left to represent the net income of the agent or agents who own the agency?

Q. If this varies with different size agencies, then, of course, you are permitted to say so.

A. I would say the large city agents would spend approximately 45 percent of their commission income for overhead, whereas the agencies in smaller communities where rent and clerical salaries are smaller, would not have

overhead as large. I would estimate in that case approximately 35 percent.

Q. Do you know of a magazine called "Rough Notes"?

[fol. 850] A. Yes.

Q. Who are the main body of subscribers to that magazine?

A. Insurance agents and salaried company representatives.

Q. It is a monthly magazine?

A. I believe it is. I don't subscribe to it.

Q. Is it a magazine of high standing in the business or low standing?

A. It is of very high standing.

Q. Is it a very old magazine or a new one?

A. I don't know the age. I have been in the business about sixteen years and, as far as I can remember, I have always heard of "Rough Notes".

Q. Where have you been engaged as a casualty field man besides in Virginia?

A. I started out in Philadelphia. From there I went to St. Louis, St. Louis to Des Moines, Iowa, from there to Chicago, from Chicago to Wheeling, West Virginia, and Wheeling to Richmond.

Q. With reference to this testimony you have been giving today about what field men tell agents, how policies are written, engineering and claim services, how an agent must proceed to avail himself of them, the difficulties you encounter in trying to get agents of other companies to become agents of your company, contracts resulting from solicitations, life of a contract by original issuance and renewal, gross income of an agency as compared to net income, has what you have said with reference to your local business here in Virginia and local conditions in Virginia [fol. 851] been generally true as to all of these other States where you have worked as a field man?

A. I would say in general that conditions in Virginia are similar to those which I have found in the other territories in which I have been engaged.

Q. About what average rate of commission will a resident commission agent of Virginia ordinarily receive on his fire, casualty, fidelity and surety business?

A. I would say the commission to the city agent would be around 20 percent and to the agents in smaller communities around 18 percent.

Cross examination.

By Mr. Staples:

Q. Are you in charge of the Engineering Department of your Branch Office in Richmond?

A. Mr. Staples, I have supervision over the entire Branch Office and the engineers are located in our Branch Office.

Q. Are you at all familiar with the work done by the Engineering Department?

A. Yes.

Q. Is it your same company that writes these fire policies or is it an affiliated company?

A. It is an affiliated company. Their names are The Automobile Insurance Company and The Standard Fire Insurance Company, two companies.

Q. You spoke of the work done by the Underwriters in your office. What does an Underwriter do from the time [fol. 852] the application comes in for consideration? What is the work that he does about it?

A. Well, he takes the application and makes certain that every question is properly answered, that it is legible, so [fol. 853] that when it gets back to the girl, the policy-writer, she will understand it and be able to copy it into the policy which she types up. He checks the rate to see that the premium inserted in the application is correct. In our office he sees, if there is a file on this particular risk for this particular assured, whether we have other coverage in force and whether that other coverage has any bearing on this particular risk. I believe that is, in the main, the work of an Underwriter.

Q. This underwriting is practically clerical work, isn't it? There is no judgment or discretion necessary in a thing of that kind, is there?

A. Oh, yes, the Underwriter must exercise what we call underwriting judgment as to whether the risk is acceptable to our company. He makes the decision as to whether we will assume the liability of the risk or will turn it down.

Q. What is there on one of those application blanks that would present to an Underwriter any facts from which he could be able to exercise any discretion or judgment? What facts are there that come before him which would bring into play any discretion?

A. Well, for one thing, the use of the equipment. Another thing is the age of the piece of equipment. I don't

see it on this form but our form asks whether the risk has been declined by any other company. It asks whether the assured or the driver, if it is an automobile risk, is physi- [fol. 854] cally impaired, and often the location of the risk affords the Underwriter information as to whether it is acceptable or not.

Q. Suppose it has been declined by another company, what do you do with it?

A. Hold it up and ascertain why the other company declined it.

Q. That would require an investigation, wouldn't it?

A. That is right.

Q. So that the only discretion the Underwriter in your office would perform in a case of that kind would be to look at the policy and say that it has to be held up on account of the way that particular question is answered, isn't it, and that follows as a matter of course?

A. I don't quite understand. You mean if there was nothing else wrong with the application at that particular point that is all he would do?

Q. As I understand you, it is a matter of routine; if the application shows on its face that another company has rejected it, then you will not pass it until an investigation has been made as to why the other company had rejected it; is that correct?

A. That is correct unless the agent has furnished us with additional information at the time he submitted the application to us, explaining why it has been previously declined or cancelled.

Q. If an application comes into your office showing a previous rejection, who would pass on that, on the ultimate [fol. 855] issuance of the policy or rejection of the application made to your company?

A. Do you mean would the Underwriter pass on it?

Q. I mean who would pass on it in your office or would you send it to the Home Office?

A. In some cases the Underwriter would pass on it himself. If he was in doubt he might bring it to me and discuss the case with me. In other cases it might be submitted to the Home Office with the full story for their decision.

Q. Then when testimony was given in this case of an underwriting capacity to pass on a number of these claims a day, this testimony has reference to the cases where the application blank disclosed no reason at all for the exercise

of any judgment but the policy should issue as a matter of course? Isn't that true?

A. Oh, no. I had in mind the general run of applications, some of which go through without any hitch and some of which we find points on which the application may have to be held up for a short while.

Q. If the application has to be held up it is usually referred to you to the Home Office, isn't it?

A. No, I wouldn't say that. I would say that in many instances the application is held up for the Underwriter might either write to the agent for additional information or he might order a special investigation by our Credit [fol. 856] Reporting Bureau or he might write to the former carrying company direct and ask them why they refused to write or relieved themselves of liability on the risk.

Q. When the local agent himself issues the policy without sending it to the Home Office, I believe you stated that the Underwriter in that agent's office didn't have any direct contact with the assured; is that true?

A. No, I did not state that. I believe what you are referring to is that I stated that the local agent usually did not have an Underwriter in his office, that the application went direct to the policywriter.

Q. Isn't it a fact, Mr. Osborn, that when this agent himself goes out and gets all of this information and puts it into that blank he is practically acting as an Underwriter when he does that?

A. Yes, that would be a fact.

Q. In other words, he acts as his own Underwriter and elicits the information as he goes along that will enable him to determine whether or not he should exercise his judgment in favor of taking the risk or rejecting it?

A. That is right.

Q. You spoke of these agents that work out of your office on a commission basis. Do these agents represent any other company besides yours?

A. We don't write steam boiler insurance and so we have arranged for those agents to represent the Hartford Steam [fol. 857] Boiler and Inspection Company.

Q. They don't represent any competitor of yours, though?

A. No.

Q. Do you give those agents office rent?

A. Yes.

Q. Do you supply them with stenographic service?

A. A certain amount.

Q. Stationery and office supplies?

A. We supply them with stationery.

Q. The status of these office agents then toward your company is materially different from that of the general run of agents throughout the State in that these other agents seem to represent other companies and have a choice or option whether to place their business with your company or with the other companies; is that not true?

A. It is true to the extent that you set forth, yes.

Q. And they also usually pay their own office rent and their own stenographers and the expense of operating their office too, do they not?

A. That is true.

Q. How does your office handle the business originating outside of the State in the casualty and surety lines?

A. Of course, if the business originates outside of the State it goes to the Branch Office located in the territory where the business is originated. That office, in turn, either issues the contract and sends it to us for countersignature or orders the policy to be issued from our office.

[fol. 858] Q. What percentage of those cases are issued from your office, would you say?

A. I don't have any accurate knowledge on that. If it is a risk covering in a number of states it is usually issued by the originating office. If it is just an individual risk in Virginia it is usually issued by our office.

Q. What is the best estimate you have as to the percentage of these contracts which are confined to Virginia and those which cover in other States as well?

A. I would say that the majority of them are issued here. By "majority" I mean of the total number of contracts. Some of these larger risks, covering in a number of States, are issued in another office.

Q. In these contracts that come to your office to be written in your office, who does the underwriting work in connection with them?

A. Our regular staff of Underwriters.

Q. If there is any engineering work to be done in the way of determining the classifications and automobile fleet policies or Workmen's Compensation Policies, who would do that?

A. Our Underwriters would or the inspection made by the Inspection Department.

Q. Is it customary for your office to do that in contracts of that type which come in, whether from within or without the State?

[fol. 859] A. No, the policy is usually issued on the basis of the order that we receive.

Q. A policy that is negotiated by a broker outside of the State is issued without any representative of your company having any contact at all with the risk itself in Virginia; isn't that true?

A. You mean prior to issuing?

Q. Yes.

A. No. Like most companies, we have certain risks that we will not issue policies on until we have inspected them and the originating office can order the inspection and not pass the risk before sending us the policy for countersignature and, in case the application were sent to us for issuing, we would order the inspection in compliance with our company's rules prior to issuing the policy.

Q. Does your Engineering Department service these out-of-State solicited risks covering in Virginia?

A. Yes.

Q. Does it render the same service to them that it does to the risks which are negotiated inside of Virginia?

A. Yes, they receive their instructions to service from other offices or from the Home Office and those instructions are just as binding on the engineer, as any instructions that we may give in connection with our own risks.

[fol. 860] Q. Does your Engineering Department receive copies of all these Virginia coverage risks?

A. I am not sure whether the Engineering Department receives copies. We receive copies and have copies in our office and whether they refer to our general file for that information or have separate copies for themselves, I am not certain. I am inclined to believe that they use our general copies.

Q. Does your Engineering Department have standing, general instructions to service all Virginia risks, regardless of whether they originate in Virginia or outside or do they wait until they get some specific request from an out-of-the-State agent, broker, or a Branch Office before servicing these out-of-State negotiated Virginia risks?

A. It is all the same, regardless of whether the policy is written in Virginia, originated in Virginia, or produced by a Virginia or out-of-the-State agent.

Q. You say it is all the same. Do they have standing instructions to service all of them?

A. Yes, all of the type that we service.

Q. And they are not required to wait for the request of the out-of-State Branch Office or Home Office before they do that, are they?

A. Of course, they have got to have notice of the coverage.

[fol. 861] Q. Do they get that as a matter of routine?

A. Yes.

Q. So that after they get that notice that this coverage has been contracted for, then it becomes automatically the duty of the Service Department to render such service as is appropriate to that risk, regardless of whether it originated outside of the State or not?

A. That is right.

Q. These so-called company office agents who operate on a commission basis and not on a salary, out of your office, do they undertake to service the risk that they procure or do they rely on the servicing departments of your company to do that?

A. They undertake to service the risk in the same manner that agents located outside of our office do.

Q. Do they also write casualty business—those office agents?

A. Yes.

Q. Would you have any objection to stating whether or not in cases since June 21, 1938, where you did have the contracts which were produced outside of Virginia, or any of them, signed by a local resident commission agent, you furnished this agent or had readily available to him in your office a copy of the coverage contained in the contract which he countersigned?

[fol. 862] A. We have in our office copies of coverage of all contracts that have been countersigned.

Redirect examination.

By Mr. Christian:

Q. Are the practices of the Richmond Branch Office and its personnel, and the functions of that office and its personnel, similar to the practices and functions of other

Branch Offices and their personnel of your company in other States, or different?

A. They are very similar.

Q. Have you had an opportunity to actually observe that in your employments in the other vicinities to which you referred in your testimony today?

A. Yes, as I have been located in a number of other Branch Offices.

Q. And a man could go out of your Branch Office and go into one of those others to do the same kind of work without any instructions whatever, couldn't he?

A. That is right, yes.

Q. In respect to these contracts which are produced outside of Virginia and cover in Virginia, I had been under the impression, until I heard your evidence on the stand today, that it was the general practice of the stock companies admitted to Virginia, such as the plaintiffs, that those policies should be written either in the localities of production or at the Home Offices and then sent to Virginia merely for countersignature. As Mr. Adair testified, that was so in respect [fol. 863] of his company and I got the impression, both from his testimony and that of Mr. Nichols, that it was so as to companies generally. I understood today from you, however, that such is not the case with your company. Is that correct?

A. I testified that in some instances we issue the policy from our Branch Office and that is correct.

Q. And that is a policy that is produced outside of Virginia and covers in Virginia?

A. That is right.

Q. In that case has the order from the producer for the policy or the application, as it has sometimes been called today, been underwritten and endorsed as approved in another Branch Office of your company, away from Virginia, before it comes to your Branch Office?

A. In some instances it has been underwritten before it came here and we were merely instructed to issue and, in other instances, we underwrite in the same manner as we do if it comes to us from one of our regular agents.

By Mr. Christian:

Q. Do you ever get policies from the Home Office for countersignature?

A. As far as I know, we do not.

Q. To be certain that I have got the record clear, in speaking of this business that is produced outside of Virginia and covers in Virginia, what portion of the contracts are [fol. 864] prepared outside of Virginia and sent to you for countersignature and what portion of the contracts do you prepare the policies as well as countersigning them?

A. I will say that in most instances, policies are prepared in our office here.

CHANNING F. MACNEIL, called as a witness by the plaintiffs and being duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. MacNeil, you are a plaintiff in this case, I believe, and the Manager of the Casualty Department of the Virginia Branch Office of the plaintiffs, the Travelers Insurance [fol. 865] Company and the Travelers Indemnity Company, which Branch Office is in this building, in Richmond; is that correct?

A. That is right.

Q. Please say what differences, if any, exist between Tabb, Brockenbrough & Ragland, on the one hand, and your office agents Maurice Tyler and John E. Woodward on the other hand, with respect to the extent of their ownership of their expirations?

A. None.

Q. In your office, do you have responsibility for the collection of premiums from agents, or does the Cashier have that responsibility?

A. The Cashier has the direct responsibility.

Q. To whom does he report?

A. The Comptroller of the company.

Q. In Hartford?

A. In Hartford.

Q. Is he in any manner under your supervision?

A. No, sir.

Q. I believe, however, that under your contract, if he asks you to assist him in collecting an amount from an agent and you do not want to terminate the contract of the agent, it would be your duty to assist him, would it not?

A. Correct.

Q. What are your functions for the Travelers Insurance [fol. 866] Company in your capacity as Branch Manager?

A. Underwriting and production.

Q. Do you have authority over payroll auditors, engineers, claim personnel, bookkeepers, accountants, stenographers, policywriters, or messengers connected with the Branch Office?

A. I do not.

Q. To what extent do you make use of the services of the payroll auditors, engineers, and claim personnel beyond the extent to which Tabb, Brockenbrough & Ragland are entitled to do so?

A. Not in any other way.

Q. Do you have any more authority over them than Tabb, Brockenbrough & Ragland have over them?

A. I do not.

Q. Under the custom and practice of Virginia resident commission agents, is it any part of their usual duty or custom to inspect automobile risks themselves, as distinguished from causing inspections to be made by the Engineering Department?

A. From my knowledge over a long number of years, I would say that the agent, as a rule, does not inspect automobiles wherever he has the facilities of an engineering department.

Q. Well, do you think that in selling contracts they represent that they are, themselves, going to inspect them, or do [fol. 867] you think they represent that they are going to get the inspection done by the Engineering Department?

A. I think in the case of a fleet policy they probably represent that the Engineering Department will inspect the risk and give complete service.

Q. What do you think they would do in the case of an individual automobile risk? Would anything be said about inspection?

A. Not to my knowledge.

Q. Please state what is the average premium on casualty contracts written in your office?

A. $30.50.

Q. What is the average life of such contract, carrying each renewal as a new contract?

A. In my estimation, it is approximately seventeen months.

Q. Did that business include any health and accident business?

A. It did not, nor any fidelity and surety business.

Q. In your opinion, would the average Virginia resident agent have, on the average, the same average premium and length of life or term of contract as your office, or would it have larger or smaller figures?

A. I should say that the average would be the same for the same lines.

[fol. 868] Q. How much time would you estimate the average Virginia resident commission agent spends either in rendering some service himself on his existing contracts or in securing the rendition of such service from the company?

A. I should say, from my observation over a long period of years, that the agent might possibly spend on an average probably 50 minutes or 60 minutes out of a day. Perhaps half of that would be in the morning, perhaps the other part during the latter part of the day. Of course, some days he might spend a great deal more than that, some days he would not spend any, and my statement is simply one based on judgment—not on any one agent, but on a great number of agents both in and out of the Branch Office.

Q. Is it part of the duty of a casualty field man, in getting new agents, to try to procure as his agents persons who are acting as agents for other casualty companies?

A. Yes, sir.

Q. Do you make such efforts?

A. Yes, sir.

Q. Please say whether, in the course of your efforts to get agents of other companies to change their connections and to become the agent of your company, it often happens that they object on the ground that they do not want to give up the service facilities of the company they are presently representing?

A. That is true.

[fol. 869] Q. Do you ever have these people express an unwillingness to give up the claim and engineering services of the company they are then representing?

A. Yes, sir.

Q. Do you find you are always able to convince such prospects that the claim and engineering services of your company are better than those of the company you represent?

A. Unfortunately, no.

Q. In such cases, do you explain to the prospect the nature of the services available by your Claim and Engineering Departments, and have them say to you that the

services they are then receiving from their companies are equal to the services of your company?

A. Yes, sir.

Q. How many separate contracts, on the average, would you say result from a hundred solicitations by a Virginia resident agent of prospective customers who are not then his customers?

A. I should say approximately ten percent.

Q. Suppose, instead of soliciting people not then his customers, he solicited present customers for new contracts and he tried a hundred customers; how many contracts would he get out of the 100 solicitations, in your opinion?

A. I should say approximately fifteen percent.

Q. Is it a part of your duty, when agents become discouraged over the lack of success in their solicitation, to inform them of what their expectancy should be as to suc-

[fol. 870] cess and to encourage them if their results ought not, in fact, to discourage them, even though they think they are discouraged?

A. Yes, it is part of my duty.

Q. If such an agent sells a hundred contracts to separate customers on the same date, with an average life of seventeen months, as you have said it would be, including the casualty lines, other than accident and health, how long would it be, in your opinion, before all that business should reasonably be expected to go off his books?

A. I should say six years plus.

Q. How did you arrive at that?

Q. That would not be the average life, but it would all be gone at the end of six years, would it not?

A. That is true.

Q. With an average life of a little more than three?

A. That is right.

Q. About what rate of commission will a successful general insurance agent in the smaller cities of Virginia receive on his annual premiums?

A. I should say approximately 15 percent.

Q. About how much of that would you think he would ordinarily spend in the payment of expenses of all kinds?

A. Five percent.

Q. Giving the same figures as to the agents in the larger cities, about what would their commissions be?

[fol. 871] A. 20 percent.

Q. And their expenses?

A. Eight percent.

Q. In what States other than Virginia have you been a casualty field man?

A. Wisconsin, Connecticut and New York.

Q. What differences exist between the situations and practices as to which you have testified in these other States and the corresponding situations and practices in Virginia?

A. Similar in all the offices I have been, generally speaking.

Q. In the case of a Virginia resident agent reporting to the Richmond Branch Office, reporting business covering outside of Virginia, does the Richmond Branch Office usually send the order for the policy to the Branch Office in the locality of coverage in order that the policy may be written there, or does it usually send it to the Home Office for it to be written there, or is it usually written in the Virginia Branch Office?

A. On all risks outside of automobiles, the order is transmitted to the Home Office, the policy is issued there and sent to the Branch Office in the State in which the risk is located, and countersigned there and then sent to the Richmond Branch Office.

[fol. 872] Q. Where are automobile fleet policies usually written if produced in Virginia and covering outside of Virginia?

A. Well, if the assured has a Virginia address, covering in Virginia as well as other States, that policy is issued here.

Q. Otherwise, where is that fleet business written—not single risks, but fleets?

A. If it has no Virginia address and covers in States outside of Virginia, it will be sent to the Home Office for them to issue.

Q. Do other Branch Offices of the Travelers follow the same plan and have personnel with the same qualifications and duties as your Branch Office?

A. They do.

Q. In your opinion, can a Virginia countersigner ordinarily make an efficient check in Virginia of the correctness of the writing of a contract produced outside of Virginia and sent to him for countersignature where the business is business other than Workmen's Compensation or automobile liability?

A. He can in some cases, and in some cases he cannot.

Q. Why is it that he cannot check in some cases?

A. Well, in certain risks where they are written at manual rates, he can check that with his own manual, but if they were not written at manual rates—in other words, written at what we call equity rates, or experience rates, you could [fol. 873] not check it because he would not have what the experience factor or the equity credit was.

Q. Would you say that most of the risks covering countrywide or over a section of the country, involving substantial premiums are written at manual rates, or would you say that most of them are written at equity or experience rates?

A. Well, it is a combination of both. Certain States are not allowed to use equity rates, and I should say that that varies. I can't give you the exact ratio. I have no way of checking that. I think that most of the larger risks—I mean by that risks such as large chain stores where they have risks probably in every State, or the majority of States, that lines other than compensation and automobile are either experience rated or equity rated.

Q. I believe you stated your office issued about 24,000 contracts a year; is that correct?

A. Approximately correct, yes, sir.

Cross-examination.

By Mr. Staples:

Q. You spoke of these office agents. How many do you have?

A. In Richmond we have fourteen, in Norfolk we have seven.

Q. Do they have their offices in the same quarters as the Branch Office of the company?

A. The fourteen in Richmond do.

[fol. 874] Q. How about in Norfolk?

A. They have their office in the Royster Building.

Q. Does the company rent their office space?

A. They do.

Q. What is the difference in the relationship of those agents to the company and the other agents that rent their office space and pay their own office expenses?

A. The only difference I can give you is this, that the Branch Office agents that we have only represent the

Travelers in the various departments, such as the life, accident, fire and casualty; they have no other company. They are supposed to devote their entire time to the Travelers' interest, and not to any other company's, and in consideration for that, they are called "Branch Office Agents" and given Branch Office space. Other agents outside represent any companies they want to and as many as they want to. We have no restrictions.

Q. Is there any difference in their commission rate?

A. No, there is not.

Q. Then, you really, in effect, or your company, pay these office agents more than you pay the independent resident agent that has a choice of placing his business with other companies represented by him, do you not?

A. Well, when you consider that most of these Branch Office agents that we have are principally life and accident agents, I would not feel that that was a true statement. In other words, you understand, Mr. Staples, they do not de- [fol. 875] vote their time principally to casualty. They are primarily life and accident men.

Q. Oh, I did not understand that. I did not know we had any life insurance business mixed up in this.

A. With most of these agents, the preponderance of their business is life and accident business, and the casualty business they write is a minor part.

Q. In other words, they do not amount to much in the casualty business?

A. Some of their business is that, but generally speaking that is true.

Q. The casualty business, then, is a side line?

A. It is supposed to be a side line, generally speaking, yes, sir.

Q. And you would consider that the office expense paid by the company was conceded to them largely by virtue of their activities in the life and accident field?

A. That is true.

Q. Now, what authority, if any, do you, as Branch Manager, have over the engineering service department and the inspection service?

A. Well, I have no authority to hire or fire anyone connected with the Engineering Department or to tell them what to do. I can only suggest certain things. When we have something come up that needs inspection and the request is made out by me to him stating what we would

like to have him do, he is under no obligation to do it unless he wants to. In other words, it is left to his own judg-
[fol. 876] ment and initiative whether he will make the inspection right away or when he gets good and ready.

Q. It has been the testimony of other Branch Office representatives in this case that very frequently in certain types of risks involving principally automobile liability policies and Workmen's Compensation policies, that the intelligent underwriting of the proposed risk would have to be based upon the result of some sort of inspection by the engineering and inspection service; is that true in your company?

A. It certainly is, yes, sir.

Q. Now, if a proposed risk comes in to your office and you request that service, is the Engineering Department under obligation to render it?

A. Oh, yes, as soon as he can. Of course, lots of times an engineer has a certain schedule made out for going into certain territories and he has made engagements to make other inspections, and if he can make that inspection at that time, he will do so. Sometimes it has to be postponed until it is convenient for him to do that. It is a matter of convenience on his part whether he can do it immediately or later.

Q. If the resident agent, himself, is a person in whom your company have confidence—and I suppose they would have, or he would not be their agent—and he has made this inspection and so reports at the time the application is
[fol. 877] sent in, would your company rely on that, or not?

A. On any risk that had any real reason to inspect, if it is necessary to make such a request, it is done, because there are certain risks that are beyond the power of the ordinary agent to determine. He is not qualified to do that any more than I would be—certain features about engineering that the average agent doesn't know anything about—the safety of work hazard.

Q. How about a correct classification of compensation employees? Would a resident agent be qualified to do that?

A. I should say so, because, after having made an inspection, I think that they are furnished with the manuals and also a copy of the policy, showing the way it is written, and in addition to having the classifications that show how the policy is written, he has the benefit of having an inspection made and being there to actually see if the conditions con-

form to the way the policy is written. In addition to that, he has a manual which he can consult and find out if these divisions of payroll are permissible, by the manual rules, rates, and regulations, so, he has more than one way of finding out whether it is properly written. If there is any doubt in his mind after going through with all that, he would probably confer with the underwriters, such as Mr. Gallaher—if there was any doubt in his mind about his opinion after having consulted the policy record that he has and the manual.

[fol. 878] Q. He could at least ascertain all the pertinent facts and material facts on which the conclusions would be based, could he not?

A. The engineer?

Q. No, the resident agent, in classifying employees for Workmen's Compensation Insurance?

A. Are you speaking now about the writing of the policy, or inspecting it?

Q. I am speaking of the time before the policy is written.

A. There are certain cases that the agent can do that and there are other cases where he could not do it, in my estimation.

Q. Give me an illustration of some sort of fact relating to the classification of employees for rating purposes that a resident agent would be unable to ascertain.

A. Well, there are certain risks where he might classify all the employees in two separate classifications, believing that they had both classifications in the plant, when, as a matter of fact, if he were to examine the manual, he might find that it was possible that he could not use two classifications, that he had to use simply one, that it was a proposition where you had to use one instead of two classifications.

Q. Well, is there any reason why the resident agent cannot get that out of the manual, as well as the engineer can?

A. He might get it out of the manual if he was competent, but lots of these agents are not competent to do that.

Q. I am assuming you have a competent agent.

[fol. 879] A. Are you talking about our agents?

Q. I am talking about what a competent agent ought to know. If he is incompetent, he has no business being licensed by the Insurance Department.

A. If he is competent, he could do that, yes, that is true.

Q. Now, is there anything relating to the underwriting that a competent resident agent cannot do in the ascertain-

ment of facts, so far as classification relating to employees is concerned, in Workmen's Compensation Insurance, prior to the issuance of the policy and on which the premium rates would be based, that an engineer could do?

A. Well, you speak of the words "competent agents". I say this without any reflection on the part of any Virginia agent, but I think that there are very few agents, even the larger ones, that are competent to underwrite compensation policies. I am talking now about the larger risks. They might perhaps get the classifications, perhaps correct, but I do not think they have the judgment to say whether that is a risk that they should write from an underwriting standpoint.

I don't know which you mean. You seem to be talking about both. You have got them both mixed up, at least I have.

Q. No; my question is confined to the ascertainment of facts and presenting those facts to your underwriter.

A. I think they probably could get the general facts in order to write the policy to present to him—that is what you mean?

[fol. 880] Q. Yes. Then, this resident agent might be able to save a lot of time by doing that, if your engineering service department is engaged in other matters, as you stated some time ago; isn't that true?

A. So far as the classifications are concerned, yes.

Q. Now, what other matters would be deemed necessary to investigate in connection with a proposed risk before the policy is written for which you think it would be necessary to call in the engineering service?

A. I will give you two illustrations, Mr. Staples, that will probably clear the question up: Suppose an agent goes out, and he is competent, and gets proper classifications on a portable sawmill, and gets the proper rates, and gets everything 100 percent correct and brings it in to our office; we would not issue that policy because, in the first place, we would have to send an engineer out to find out about the physical facts of that plant. One of those things is the inspection of a boiler. Now, I do not think the average agent is competent to go out and inspect a portable sawmill boiler, and I do not think they would, because usually they are isolated risks out in the woods, away back from the main highway, and he would have to "Get out and get under,"

so to speak, and if he did, he probably would not know what it was all about; and the reason we do that is because in a portable sawmill one of the most serious hazards is the fact that they are old and secondhand and, if they should explode, there is a compensation hazard, and on that same [fol. 881] risk, I do not think the average agent you assume is competent knows anything about the manner of safeguarding saws and machinery and the safe practices of employees, what they should and should not do.

Q. I can well understand that in respect to boilers that is true. How about ordinary machinery policies?

A. I do not think the average agent is competent to go out and inspect a boiler risk and bring in the proper data upon which to issue a policy.

Q. Did you say a boiler risk?

A. Yes, sir.

Q. I had reference to other types of machinery.

A. Do you mean machinery in a plant?

Q. Yes.

A. I still say the same thing—I do not think the average agent knows anything about the machinery in an average plant, or the safeguards or anything to do with it.

Q. How about Workmen's Compensation?

A. I say the same thing.

Q. And automobile fleet policies?

A. I still say the same thing. I think he may know a little bit more about the automobile fleet policies than about inspecting machinery in a plant, or a sawmill boiler, but I think his knowledge is limited there also.

Q. Do you mean to say that before these policies are issued of these types it is customary in your office to have [fol. 882] the engineering service inspect those risks?

A. Which risks do you mean?

Q. Any of these types of risks in which you state that the resident agent is not able to obtain sufficient information on which to base the underwriting, such as Workmen's Compensation, boiler insurance, machinery policies, elevator policies, and automobile fleet policies?

A. In Workmen's Compensation there are certain policies that we will not issue until we have an inspection first. The same thing is true of boilers, the same thing is true of fleets, the same thing is true of machinery, and by the same token,

there are certain policies in every one of those lines that we will issue. It all depends on a matter of judgment.

Q. How about plate glass insurance?

A. We will issue policies on plate glass without inspection, or hold them up until we have inspection, either way. In other words, Mr. Staples, it is a matter of judgment whether we will issue it before or whether we will not, depending on the nature of the risk and the hazard.

Q. Now, is it usually customary in large risks to have this inspection service before you issue the policy, or not?

A. It doesn't make a particle of difference about the size.

Q. Does the size of the risk have anything to do with the probability of whether or not inspection would be necessary?

[fol. 883] A. No, sir.

Q. In other words, a fleet involving three or four hundred cars would not be any more likely to require inspection that one involving one car?

A. Well, we give that inspection on a fleet policy automatically.

Q. I am talking about the time prior to the issuance of the policy.

A. No, we do not find it necessary as a rule to hold up issuance of a policy. Then, again, there might be a case where we would. Let me give you an illustration of what I mean; if we had a fleet of commercial automobiles that we knew was a good risk of its kind, and we have ways and means of checking up what the experience is from the Bureau, and we know or the record indicates that it is a good risk, we probably would not inspect that risk before we issued the policy; we would automatically do that afterwards—what we call "Fleet Service".

Let us take another case. Here is a taxicab company, or a trucking risk: In looking up, we find that the experience on it has not been so good, and we have some reason, best known to ourselves, that we want to go into the question of what this firm pays the driver, whether $15 a week or $30 a week, and whether they do night driving, and a lot of information. Now, instead of issuing that policy, like we do the other I have just mentioned, we would not issue that policy until we had an engineer go and get all the information which the proposal does not disclose to us at all, which gives us a great deal of additional information which it

[fol. 884] would not be possible to put on a proposal unless it were a pretty bulky document.

So I will state it this way: In certain cases we do, in certain cases we do not, depending on judgment.

Q. When that is done, is that information submitted to the underwriter, or to you, or to whom?

A. To the underwriter.

Q. And he passes on whether the policy or risk is bad judgment?

A. Well, he passes on it as far as he can and then, if he is in doubt about it, he takes it up with either my assistant, Mr. Cosby, or myself, and we can't pass on it—it is something too involved—we send it to Hartford.

Q. Is that generally customary in all these casualty companies?

A. I think so, yes, sir.

Q. You think they follow the same underwriting practice along those lines?

A. I feel that they do, generally speaking, yes, sir.

Q. Do you know of any exceptions to that?

A. No, I think it is pretty generally done.

Q. Now, tell me what is the practice in relation to a contract negotiated in New York or some other out-of-the-State place involving one of these cases where an engineering inspection is called for prior to issuing the policy. What does the company do about a case of that kind?

[fol. 885] A. This office does not do any of the underwriting on such risks as you have outlined.

Q. Well, it would be necessary for the New York office to call on the Engineering Department here to do that work before they wrote the policy, would it not?

A. I presume it would, if it was one of those types of risks I have described.

Q. In other words, it would be very poor underwriting not to do that, would it not?

A. If it was a risk where the judgment was that it should be inspected before, but it is a question of the judgment of the New York office, whether they would decide it would be necessary to have the inspection before the policy was issued or not.

Q. I believe it is the practice of a large number of mutual companies to compensate their agents solely on a salary basis, that is, the agent who performs substantially similar

functions to the commission agent of the Travelers and other stock companies, is it not?

A. Well, sometimes some of the companies do that, and some pay the same as the commissions to agents.

Q. Most of them follow that practice?

A. I would say no, considering all lines of insurance written. Two of the big companies, I believe, the Liberty Mutual and the American Mutual, are supposed to have nothing but salaried employees. I understand, however, [fol. 886] there are certain others that do pay commissions. Other mutual companies may have a salaried manager, if that is what you mean. They also pay commissions to agents; for instance, Lumbermen's Mutual probably has a manager here that receives a salary, but most of their agents receive a commission.

Q. Are there any mutual companies engaged in local casualty business?

A. Yes.

Q. I mean, that are not engaged in an interstate business?

A. Not that I know about.

Q. I believe that all of the stock casualty companies have adopted the practice of using commission agents for the writing of their business, or the securing of their business; isn't that true?

A. Securing of the business, yes, sir.

Q. Do I understand you to take the position that substantially the only function an agent of that kind performs is negotiating the business?

A. No. I think he gives a certain amount of service to his policyholders, as I have mentioned before—looking after the people on his books, and I think 90 percent of his time, in my estimation, is in getting new business. That is the way an agent has to live. He can't keep on devoting most of his time to giving service, and expect to get anywhere. He has got to divide his time, and I should say if he does not devote 90 percent of his time to getting business one way or another, that he won't be very successful.

[fol. 887] Q. You do know, though, generally, whether or not the larger volume of business in your office in a year consists of renewal contracts or new contracts, do you not?

A. Yes, I should say they do.

Q. Now, which is the greater?

A. The renewals. It all depends on the agent again, Mr. Staples. If he is a new man and has not had much——

Q. I am speaking of the average; I am not speaking of any particular agent. I mean, so far as your office is concerned, what is the percentage of new business to renewals in your office in a year?

A. That varies, Mr. Staples. For instance, in 1937, our increase in business was $130,000 over the year before. Last year it was about fifteen, I think.

Q. $15,000?

A. Yes. In other words, in 1937, if I remember correctly, it was something like $750,000.

Q. I believe you stated, however, that an agent could expect the business to stay on his books for an average of three years plus, did you not?

A. That is right.

Q. Is it not also true, Mr. MacNeil, that when an agent has a client's business, he usually carries more than his casualty business and would probably have his fire business and any other type of insurance that that customer carries, speaking generally?

A. Well, as a rule, he might have more than one line, sometimes only one line. It is rather difficult to say how much [fol. 888] business an agent will have with any one man. Sometimes they have it all, sometimes they have just an automobile, sometimes they will have a fire policy (in which I am not interested at all), or an accident and health policy, or a fidelity bond. If the question is whether most of our agents have more than one casualty line, including fidelity and surety bonds and accident and health, I would say that in the majority of cases they probably have more than one line.

Q. You think, then, that a man would not place his casualty business with the same agent with whom he would place his fire business?

A. That frequently happens.

Q. Isn't that the general custom?

A. To place his casualty where he has his fire?

Q. Yes.

A. In some cases yes, and in some cases no.

Q. Well, I am assuming now a case in which an agent does carry several lines for his client, and I am asking you whether or not it is not to the interest of that agent, in order to retain that business, not only in the particular casualty policy which he may carry, but in the other lines of protection also, to render the very best service he can to his client

as an inducement to the client to continue placing his business with him?

A. I presume it is, yes, sir.

Q. What is the answer?

A. Yes.

[fol. 889] Q. So that you cannot measure the amount of service which an agent would render to a client of his who has a casualty policy with him solely by the value to the agent of renewing that casualty policy, can you? In other words, you have got to take into consideration that the agent may feel that it is to his interest to spend lots more time in servicing that casualty policy than he would receive compensation for in the way of his commissions?

A. That is true.

Q. But, nevertheless, it would be to the interest to devote that time to the casualty policy in order to please his client and to secure other lines of insurance?

A. That is true.

Q. You say that a countersigning agent, in a case where the rates applicable involve what are called "equity rates and experience rates," would not be able to obtain this information from an inspection of the risk itself?

A. Inspection of the policies.

Q. Or of the risk?

A. Either way.

Q. Why wouldn't he have to get this information?

A. I think the procedure is that he would have to get the consent of the assured, in letter form, to show that he was closely enough in contact with the risk to present that request to the National Bureau in New York to get the rate. In other words, he could not, of his own initiative, simply [fol. 890] write to that Bureau—in certain cases that is true, and in certain cases we could—but his company could get it if he furnished the proper name of the assured and the expiration date and asked his company to get that information from the Bureau.

Q. Do you mean that an agent who is about to write a policy can get that information without the consent of the assured?

A. In certain cases, I think that is true.

Q. What kind of cases do you refer to?

A. Equity rating.

Q. What do you mean by "Equity rating"?

A. Well, it is a rate that is given by the company, where it is permissible in certain States, based on the experience of the risk but where there is no regulation of that risk.

Q. Would that apply in Virginia, or not?

A. It would on certain lines—not on automobile or compensation.

Q. It would not apply on any line where the State itself prescribed a rate?

A. That is true.

Q. But experience rating would apply even there, would it not?

A. Yes.

Q. Well, the agent would be given that information, then, as to automobile rates and Workmen's Compensation rates if he applied to this National Bureau?

A. In Virginia, now, you are speaking about?

[fol. 891] Q. Virginia agents, yes.

A. On a risk outside of Virginia?

Q. Inside of Virginia.

A. We would have to apply right here, to the Bureau here, for an automobile rate here, or compensation. He would not have to go——

Q. I am talking about the experience rating, not the equity rating you are speaking of.

A. On a risk in Virginia?

Q. Yes.

A. I may be mistaken about the requirements in order to get that rate. I think I made the statement that he could not check it if it was either experience or equity rating. I think that if he wants to get the renewal rate on that risk—we will put it that way—he can apply to his company, giving them the name of the risk and the expiration date, to show that he knows what he is talking about and is in contact with the risk, and then his company applies to the National Bureau, giving the correct information. I mean by that, if he does not give the right name, or if he does not give the exact date, they will not furnish that to his company that inquires, but, if he does get that information, then they will furnish that information to him.

Q. Now, if the assured be a resident of Virginia or have a representative in Virginia who would like to have the local resident agent check that experience rating with the Bureau, or the equity rating in cases where that is applicable,

[fol. 892] he could confer on the local Virginia resident agent authority to get that, could he not?

A. That is true.

Q. So that in cases of that kind the agent would be in a position to investigate the facts underlying the formulation of that rate, and if he thought it was not correct, he could take it up with the Bureau or suggest to the company or somebody else to take it up with the Bureau with a view of reducing it; is that true or not?

A. Provided he was close enough to the assured to get that cooperation. But the average agent, going into a risk that he knows nothing about, written by, we will say, a New York broker, and he wants to analyze the policies and check them up, he might get that far, and, if not, he could not check this rate, and unless he had enough contact with this assured to say, "Mr. So and So, I am unable to check this rate and I wonder if you would give me permission to write to my company and give them the facts in this case in order for me to check it up"; well, I think that the average man would not allow him to go very much further. He would realize, perhaps, that he was exposing himself in such a way, that, instead of thinking this fellow benefited him in any way—he knew he had a pretty good rate but didn't *how* how he got it, and he would be supplying this fellow with information that might go down to his disadvantage, and he could do it, but the chances are he would not.

Let us take the case of yourself. You had a pretty good rate on some risk, and a man came to you, and you knew your agent had given you a very fine rate and it was below [fol. 893] the manual, and I came into your office and I would say "Mr. Staples, I would like to see your policies. I can't find out how you got such a fine rate; I can't check it," and to try to find out how you got that rate, I would ask you for all this information. Well, I don't think you would furnish it. You would say, "Wait a minute. That is up to you." Now, I think that is the natural thing a man would do. You asked me the question, could he do it. If you want to break down and tell him all about how your New York broker got that rate, and tell him all about it—"Here is the policy, here is the letter; you write the company and tell them you want to know all about it"—he could do it, but I don't think that is the practice of most people.

Q. I think you are entirely correct, Mr. MacNeil, in cases where a man is under the impression that he has probably

got a better rate than he is entitled to, and naturally that man doesn't need any service. But what I had in mind, more than that, was a case where a man was dissatisfied with his rate and then the agent comes to him and says, "I may be able to help you with this thing. It looks to me like your rate is too high. You have given me the facts about your experience and, if you desire, I will be glad to reopen this matter and see if I can't get a better rate for you." Now, what would be the reaction of a policyholder of that kind?

A. We are speaking now of equity rating, aren't we?

Q. I was speaking of equity rating and experience rating, both.

A. Well, if the assured was dissatisfied with the rate, I think he would take it up with his New York broker, I do not think he would take it up with the local man.

[fol. 894] Q. The local man takes it up with him, under the assumption of my question.

A. I think, in most of those cases, that man that is here would simply say, "My insurance is handled in New York and I have nothing to do with the placing of it. The policies are all kept in New York."

Q. You think the local representative would not feel that it was incumbent upon him to take enough interest in the matter to try to save his company money if he thought it was probable he could do so? Is that your idea?

A. My idea is this: The local man here has no jurisdiction over placing business or no jurisdiction over the policies. They are probably kept in New York. He could not give the local agent here what he wanted in the way of information and, if he wanted to, he probably could not. Probably it would be the concern of the insurance manager, the brokers, or both. They rely on someone in New York, Chicago, or Philadelphia, who would resent any interference by some local representative, Branch Manager or whatnot to give out information about the insurance which he had nothing to do with.

Q. Don't you know, Mr. MacNeil, that every State Manager of any industrial plant or business of any kind which is a branch of a national organization is primarily interested in making a good record of profits on his State operation?

A. I presume he is.

[fol. 895] Q. Now, do you not also know, Mr. MacNeil, that in a final accounting as to whether or not the State opera-

tion is profitable or unprofitable, there would be charged against the expense of operation, on overhead charges or whatever accounting system might be adopted, the cost of insurance protection incurred in that State?

A. Yes.

Q. Therefore, the local man would have a very direct and primary interest, would he not, in reducing those costs, because it would reflect directly on the ultimate status of his State operation?

A. Yes, I think he has got that interest, but I think someone over him has that interest just as much as he has, and is familiar with it, not only from the standpoint particularly of Virginia, but also all over the United States where they were operating, and that that man probably is more competent to make decisions about that and watch those things than this manager you speak about, who is probably managing the business and is probably not very expert in insurance matters. In other words, it comes down to this: He is the manager of the company in whatever line they are following and probably his knowledge of insurance is limited. Therefore, they have a broker, or insurance manager, if you please, who makes it a point of studying those things, and they have their engineering department and [fol. 896] they inspect these plants outside of the company's engineering department, just to safeguard that very manager and to see he is getting everything in the way of the lowest possible rate, whether it is fire coverage or whatnot, and all of those things are referred to this Insurance Manager or broker and he, in turn, advises this Manager. I think, generally speaking, on these big risks that is the way they are handled—the procedure that is followed. The necessities of the business would, I think, indicate that.

Q. I am assuming a case in which the local resident agent educates, to some extent, the State representative in insurance matters, and I am assuming a case in which it is possible for this agent actually to render some service on rate reduction on an experience basis. I understood from your examination in chief that this local man would not be in position to do anything about it, and my questions are addressed to you for the purpose of bringing out the facts in relation to whether or not the local State Manager of an enterprise of that kind would not have a very keen interest in reducing his insurance cost and would not avail himself of the services of the local resident Virginia agent if he

thought those services would be helpful and if the agent were able to lead him to that belief.

A. I think that he thinks the service he gets is probably better than the service he would get from some local agent. I also think he feels the broker in New York enjoys some [fol. 897] benefits that the local agent would not.

Q. Why would he feel that way?

A. Well, he may have been impressed by the New York broker to that effect; I don't know. I know, on certain lines, these New York brokers can, perhaps, effect better coverage and better rates, not on lines regulated by the State, but on lines not regulated by the State, such as Marine Insurance —no regulation for that—Public Liability, burglary, and plate glass. Sometimes these New York brokers can, perhaps, by the volume of business that they have, get a better rate for him and his concern than a local man could get. I say, I think that the man believes that.

Q. Well, do you believe that the broker actually renders that service, or just makes them believe he does it?

A. In some cases he probably does it, in some cases he may just make him believe it—in some cases he really does.

Q. Do you think he can get a better rate?

A. In some cases he might.

Q. On all the lines you have indicated there?

A. I have been told by the agents that because the New York brokers probably do a larger business, they can get companies, sometimes, to give a better rate than they can get.

Q. Than the local agents can get?

A. That is true, where the business is one that they can equity rate, not under State regulation.

[fol. 898] Q. On experience basis?

A. Either experience or equity.

Q. In other words, you believe that they would interpret the experience more favorably for the New York broker than they would for the Virginia agent?

A. There are some companies, undoubtedly, would do that, Mr. Staples, yes. In other words, if we wrote to a New York broker, because of his volume of business, they can get some things from certain companies—not all companies. They have, no doubt, impressed these people by that fact, and that fact has been carried on down to this local man that might be in Virginia. He has been told by the centralized man in New York, "We are getting a rate

on this of so and so, and if anybody wants to see our contracts, don't you allow them to do it." When a local man comes to him and tells him he thinks, by going over his policies, he can perhaps effect a saving, I think, with most of these larger risks that have a Branch Manager, it is a very difficult thing to get in there and check the policies. It has been my experience that you can't do it, and I don't think the average agent has any more "on the ball" than I have in getting them. I have been with many of our agents to call on these larger risks to see what was going on, and I have been treated very courteously but don't get very far.

Q. It is impossible, then, in your opinion, for a local agent to get business of this type?

[fol. 899] A. I don't say that. Take the larger risks—the National Dairy Company, the A. & P., or the Sanitary Grocery—if he would go up to the headquarters of the Sanitary Grocery Company and try to get information about their coverage here in Virginia, I don't think he would get it.

Q. You don't think they would pay any attention to him other than to show him a little courtesy?

A. I think they would say, "I am sorry, but you will have to go to Washington". We have that experience; that is how I happen to know. Any local business that the man wants to give, that is a different matter, but as far as the fleet of cars of the Sanitary Grocery Company, or D. Pender, or any of those risks, you have got to go to the headquarters in order to get anywhere.

Take D. Pender Grocery Company: The man here tried to get one of these men to talk about insurance and said, "I would like to survey your policies". In the first place they are not here; they are down in Norfolk, and when you get down to Norfolk you would have to see the head man there, but it is New York who handles the insurance under all these policies in Virginia and North Carolina, but you would have to go to that man.

The point I want to make is, the Managers here haven't any authority to allow an agent to go over their policies. In the first place, they haven't got them, and, in the second place, they would not let them do that without the consent of the Home Office. Now, if he can dig up some information on his own initiative whereby he can show them he can save them some money, and they want to reward him, that is a [fol. 900] different matter. The chances are they will take

the recommendation and won't do it, or give him the business.

Q. In case of policies written by the Travelers, where the business is sent to you by your New York Branch Offices—I suppose it would be, if it was written in New York, would it not?

A. What kind of business are you referring to, Mr. Staples?

Q. Casualty insurance along both lines; I don't know whether there is a distinction. You might state if there is.

A. If our New York Office wrote a compensation policy in Virginia, in the first place, my understanding is that they would not issue the policy there and send it to us. They would send the application to Hartford to be prepared there and it would be sent to us from our Home Office.

Q. The policy would be sent to you from the Home Office on the application?

A. Yes, sir. That is my understanding, except, in the case of New York, they have a separate underwriting division, I think, and they would prepare it and send it to us, instead of its coming from Hartford.

Q. Now, in a case of that kind, covering a Virginia risk, of one of these national corporations which does an interstate business, would your office try to take that business away from the New York Branch Office, or not?

A. Under no circumstances.

[fol. 901] Q. So that you would respect the rights of the New York Branch Manager to retain that business, would you not?

A. I certainly would.

Q. And you would make no effort to get that business down here for the benefit of your commission agents in Virginia?

A. I would not dare—I might want to, but I would not dare. In the first place, if I did do that and it got back to the New York Office or to the broker, I think he could make it very unpleasant for me with the President of the company. If he went in and said, "We wrote this business through the Richmond Office, and that fellow MacNeil decided he would like to have it in his office and he went out there and tried to get the fellow to put it with him at expiration, and I want you to either fire him or discipline him or do something." The chances are I would get a telegram, if he was a big broker with us, or even a little one, asking

me if it was true and to let him know what the full facts were. And so, with the viewpoint, of course, we don't dare and would not think of it in any way, shape, or form to go near that risk for that purpose.

JAMES J. IZARD, called as a witness by the plaintiffs and being duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Izard, where do you live in Virginia?

A. Roanoke, sir.

[fol. 902] Q. How long have you been in the insurance business up there?

A. From 1916 until now. That is 23 years.

Q. What is the name of your firm?

A. Charles Lunsford & Sons.

Q. Who are partners in that firm besides you?

A. Charles I. Lunsford, Charles P. Lunsford, and myself.

Q. How long has Mr. Lunsford, Sr., been in the business?

A. I think, about 55 years.

Q. Will you please say of what companies your agency is the agent, that is, what companies individually connected with your agency have Virginia resident agents licenses, taking the fire first and then the other kinds of companies?

A. We have 25 fire companies, as well as I remember, three casualty and surety companies, and three exclusively surety companies.

Q. What are the names of the casualty and surety companies which are in your office?

A. Royal Indemnity Company of New York, Indemnity Company of North America, and the Fidelity and Casualty Company of New York. They are the combination casualty and surety.

Q. And which are the three surety companies?

A. The Fidelity and Deposit Company of Maryland, The National Surety of New York, and the United States Guarantee Company of New York.

[fol. 903] Q. It has been stated by Mr. Tabb that in his agency there are three partners, including himself, and his son, in addition to which they have ten employees, which include five women and five men, one of the men being his licensed agent son. How does that personnel compare numerically with that of your office?

A. We have three partners; seven employees, four of whom are female stenographers, if that is the way you want it divided. One of the three male employees we consider in charge of the fire and casualty department, in addition to having supervision of the actual preparation and writing of the policies themselves. One of the other young men is under the policywriter, if you want to term him as such. The third is a solicitor and in charge of our general adjusting office.

Q. Does that underwriting man who is in charge of the fire and casualty department take orders for the policies or applications, as they are sometimes called, and get them in proper shape before they are turned over to the girls to write the policies?

A. No, sir. They originate with the partners, who, in turn, turn them over to that young man for preparation. They then come back to one of the partners for review and signature.

Q. He is just a clea .g house and supervisor for the policy writing?

A. He prepares it under our direction.

Q. Have you ever had any connection with an organization called the Virginia Association of Insurance Agents, Inc.?

[fol. 904] A. I have been a member of the organization for, I guess, 20-odd years.

Q. Is your agency still a member of it?

A. Yes, sir.

Q. Will you please state whether you have been its president and, if so, when?

A. I was president in the years 1933 and 1934.

Q. For what period of time, if any, have you served on its Board of Directors?

A. I held no office in the Association until I was elected president. Then I served, of course, for two years on the Board as president and, if I am not mistaken, I think the retiring president is an ex officio member the following year.

Q. Has Mr. Lunsford ever held office in the Association?

A. He was president of the Association.

Q. When was he president, just speaking roughly?

A. Oh, I would venture the guess that it was probably about 1906 or 1908, or somewhere in there, but I don't know correctly.

Q. In this case an assault is being made by the plaintiffs upon the constitutionality of a certain Act originally known as House Bill 151, and which became effective June 21, 1938, and which purports to amend Sections 4222 and 4226 (a) and other sections of the Code and create certain new sections, and to repeal Section 168 of the Tax Code. Are you in general familiar with that Act so that my description of it enables you to know what I am speaking of?

[fol. 905] A. I am very familiar with House Bill 151. I can't say that I am with these sections as you recite them.

Q. Did you have any hand in getting that law passed by the Legislature?

A. No, sir. To the contrary, we were opposed to the bill and tried to get it amended before passing.

Q. May I ask, if Lunsford & Sons agency is faced with the choice of remaining a member of this Association and complying with this resolution, or of getting out of the Association, what will be its decision?

A. We opposed House Bill 151 for reasons as I have stated. Since its passage and its being enacted in the law, our office has fully complied with all its conditions. As I understand it now, the resolution is purely and simply a resolution of the State Association.

Q. That is correct.

A. It is not a law; therefore, I do not see how we would be bound by the resolution of the State Association. If it becomes a law, with our being opposed to the resolution, then we will either comply with the law and adhere to it, or we will resign from the State Association.

Q. You do not plan to comply with it until and unless it becomes a law?

A. We are going to comply with all the laws of the State of Virginia. If it comes to the point where we can't still remain a member of the Association and disagree with its enacted policies, then I guess it would be better for us to get out.

[fol. 906] Q. I hand you a copy of the resolution and would be glad for you to state your views about that as to the law and the resolution.

A. I think that when it comes to the point that you are deprived of making a contract with a licensed non-resident broker who is qualified to transact business in the State, that that is a prerogative of adjustment of division of commission that in no wise affects the public and should be on a

mutual, reciprocal agreement between the non-resident licensed broker and the agent. In other words, we fell that we should be compensated in proportion to the service that we render. If a controlling licensed broker out of the State does all the work to properly insure an individual or a corporation or otherwise in the State, and we merely make it legal by the countersignature, in accordance with the law, that what we should charge as a countersignature fee should be left between the broker and the agent countersigning, as long as the public is not being affected by any such division.

In regard to the resolution passed by the State Association, as we see it, the licensed non-resident broker, to a certain extent, relinquishes his control over the business in the State and the agent of the State is then made co-broker with him in the handling of the business. If I read the resolution correctly, we are charged with the responsibility of first approving the contract of insurance and its rating applicable before countersigning. The State of Virginia conducts the Virginia Insurance Rating Bureau through which copies of all policies are filed, and it is their duty [fol. 907] to see that all forms of insurance are proper and in accordance with the rules and regulations, both as to form of cover and of rates. I do not think it is the intention of any agent to wilfully try to issue a policy contrary to the rules, but with the many changes coming into our business it is necessary to have somebody supervise, to take care of normal errors and mistakes that might occur. We recognize, whether he be an agent in the State or a broker out of the State who is licensed, that the business which is the subject of insurance is the property and the business of the controlling broker or agent. We think that his form should be countersigned and sent to the Virginia Insurance Rating Bureau where, if it is approved, all well and good. If it is violated for any reason whatsoever, it is then incumbent upon the agent in the State to so notify the controlling broker of the violations and ask for their immediate correction.

I do not feel that any agent, whether countersigning agent of business controlled out of the State or business placed between agents within the State, gives any permission for an agent within the State to contact in any way the assured whose business you control. If I control business in the City of Richmond, I would naturally send it to a Richmond agent

to be issued—for the issuance of the policy—and I think, by the same token, that all of the agents in Richmond would likewise send any business providing insurance coverage in Roanoke to a Roanoke agent for execution. I feel that there is a barrier that does not permit the agent in Richmond to in anywise contact my assured, or, by the same [fol. 908] token, for any agent in Roanoke to contact the assured of the Richmond agent. This is his business, he controls it, and whether it is written correctly or incorrectly, as long as it complies with the laws of the State, I think that is the sole privilege and prerogative of the controlling agent.

If I may state my personal views, which I have done on numerous occasions to officers and directors of the State Association, I think that the two inclusions in House Bill 151 which I previously stated, where it will in anywise affect the public as to cost of coverage, it will be the medium of the losing of more business to the agents of the Association who represent old line stock companies than any rule, resolution, or law that has been passed. Necessarily, with all the concrete, definite restrictions on business, that is all lost, that has gone to other carriers, and the stock agencies who are members of the Association will lose this business for themselves and their companies. I would like to again reiterate that this whole subjectmatter in no wise affected the insuring public as to its ultimate cost or its protection. It is solely a matter of the division of a small commission between one who is supposed to have sold and gotten the business and an agent in a locality where the subjectmatter at risk is located.

Cross-examination.

By Mr. Staples:

Q. Mr. Izard, during the last ten years, we will say, has your office done any substantial amount of countersigning for non-resident brokers or agents or of business sent to [fol. 909] you direct by the insurance companies, casualty and surety?

A. We have done both, sir.

Q. About what volume has your business been along that line?

A. We have got a large brokerage office. I would not

know what percentage was direct business and what was brokerage business.

Q. I believe both you and Mr. Lunsford, and particularly Mr. Lunsford, have spent, during a long period of years, a great deal of time in New York and other large cities, building up this brokerage business?

A. We try to get it wherever we can, sir.

Q. And you have been quite successful, have you not?

A. Well, we are pretty well satisfied.

Q. What has been the nature of your agreements with these brokers as to the compensation you would charge for countersigning these policies?

A. I say, the law has practically made no change at all with the business that we had already written.

Q. In other words, it has been the practice to divide the commissions on a fifty per cent basis, has it not?

A. No, sir, not unless—it all depends upon the amount of work that you put into the servicing of the risk at the request of the broker.

Q. And it was left to the broker to determine that question, was it?

[fol. 910] A. No, sir; it was a mutual agreement between the broker and our office, if you want to use that as an illustration, as to what the compensation was on a fair and equitable basis for services that were rendered.

Q. Well, what has been the general run of the division of commissions?

A. It varies somewhat. I think some of the localities in the State have local board rules.

Q. I mean with reference to your business?

A. It would be on about a fifty-fifty basis on the fire business, and on the casualty and surety business it would be on a less basis.

Q. How much less?

A. From ten to fifteen per cent less.

Q. In other words, from thirty-five to forty per cent has been the average amount you have gotten for countersigning casualty and surety policies?

A. No, sir. The commissions are not that high.

Q. What I mean is, of the total producer's commission. What percentage of the total producer's commission has it been customary for your office to receive on these casualty and surety contracts which you have countersigned at the request of these non-resident brokers?

Q. The words "producer's commission" refer to the commission of the ordinary resident agent, and do not include the over-riding commission of a general agent or a regional agent.

[fol. 911] A. We have countersigned policies in our office without any division of commission whatsoever, having done so because of purely and simply a matter of courtesy for either a friendly agent or broker. In either case, where we had, at the request of the controlling agent or broker, rendered some service, we have retained fifty percent of the commission.

I am still talking about just the local agent's commission. As I understand, that is what we are talking about all together. The general agent, I mean, is out of the thing. Since the passage of the law, countersignatures and executions have been in full accordance with the law.

Q. In other words, you have retained fifty percent of the commissions on all countersigning done by your office since June 21, 1938?

A. Since the law went into effect, yes, sir.

Q. You said that in some cases you signed as a matter of courtesy, but where service was to be rendered, you charged fifty percent. Are there any intermediate stages between there where you charged a different rate than either of those? In other words, have there been cases in which you charged part of the commission but charged less than fifty percent of the commission?

A. Prior to the passage of the law, yes, sir.

Q. Have you ever countersigned them where no charge at all was made?

A. No, sir.

Q. Have you countersigned them in which your charge was ten percent?

[fol. 912] A. Yes, sir.

Q. And fifteen percent?

A. I don't think we ever got fifteen.

Q. Ten percent was the most you ever got for countersigning policies where the business was sent to you from New York?

A. We do not consider it as countersigning. We are the executing agent and prepare the policies for the broker. There is a difference between the executing agent and the countersignature.

Q. Do you mean that you acted as the executing agent and still got only ten percent?

A. Exactly—prior to the law.

Q. You say it has been customary for your office to countersign policies for these New York brokers and charge only ten percent, even though you prepare the policy in your office?

A. That is correct.

Q. Do you feel it incumbent on you, or does your office feel it incumbent on it, to render any substantial service in a case of that kind?

A. If we were requested to, we do.

Q. You rendered no such service except such as was requested by whom?

A. By the controlling broker.

Q. Suppose the assured should request service?

A. We would refer to the broker immediately as the controlling broker of the business.

[fol. 913] Q. In other words, you do not recognize the propriety of the passage of this law. The Virginia agent has no right at all to this business, and such as he received was merely a business courtesy or compensation volunteered on the part of the New York broker; that is true, isn't it?

A. As long as the New York broker placed business with our office, we would notify him, whether as a matter of ethics or whatnot, but we would in no wise contact that assured relative to his insurance unless requested to do so by the broker.

Q. You recognized that that broker was the owner of that business; is that correct?

A. Yes, sir.

Q. And whatever he said went about any matter relating to that policy?

A. As long as it was in accordance with the approval of the Virginia Bureau, it did.

Q. I do not mean he could ask you to violate the law, but I mean, any question that came up as to any service you should render or what you should do in connection with the policy or contract, was left in the discretion of that broker and in his control, you say, or am I correct in that?

A. He controlled the business and we serviced the risk at his request or his direction. We made no immediate contact with the assured in any way or fashion unless specifically requested to do so by the broker.

Q. In cases in which you received fifty percent of the commission, was it customary for you to render some service in that connection?

[fol. 914] A. None other than what we had previously done at the request of the broker.

Q. He usually requested more in those cases, didn't he?

A. In some cases he requested more, and we did more.

Q. Your office does render a lot of service to its clients, doesn't it?

A. We render it to the broker.

Q. I am talking about any business that you write, yourselves.

A. We try to render them as good service as they can possibly obtain.

Q. That is an incentive to retain the business, isn't it?

A. That is about the only one, I guess, except friendship.

Q. If a broker should place business with you on a fifty percent basis and ask you to render to the assured, who lives in your town or vicinity, the same service that you would render to your own client, would you do that, or would you not?

A. We would do so at his request and through him, always recognizing him to convey the information that he had requested, or the service that he had requested, in turn, back to his assured, not to us.

Q. But if he asked you to render the same service to that risk that you would render if you had written it yourself, you would do that without consulting him any further, wouldn't you?

[fol. 915] A. If he asked *is* to contact the assured and render the same service that we would do for our own client, we would do so.

Q. If the effect of this statute (I am assuming this for the purpose of the question) is to base in the Virginia resident agent a fifty percent ownership of any Virginia coverage business originating out of this State, then, do you think it unreasonable for the Virginia agent, if that construction of the law is correct, to render such service in connection with that as he would render to his own client that he had originated the business for himself?

A. I think that the person who sells the insurance and contacts the insurance controls the business. It is not changed at all by this reservation, that we will render any

more service to the broker than we have done heretofore. We will, any of us, service any risk at the specific request of the broker, always recognizing him as controlling the business.

Q. Well, what reason have you for not accepting the fifty percent, then?

A. The reason I do not think the fifty percent is right is because I think that we should be paid and remunerated on the basis of the amount of work and service that we render. I would like to make as much money in the insurance business as anybody else gets. Funny as it might sound, I don't want anybody to pay me an exorbitant commission when I have done nothing more than write my name three or six times by countersigning a policy which I had no control over, no knowledge of, or nothing other than to [fol. 916] make it comply with the law of Virginia. If I may use an illustration, I would be glad to cite you one case that I have.

Q. Go ahead.

A. We had a bridge to be built in the City of Roanoke, known as the Wasena Bridge. The bids were advertised and anybody in the United States that wanted to could bid on the construction of that bridge. The bond business is entirely different from contracts of insurance, and if you are going to obligate your company for a contractual obligation involving hundreds of thousands of dollars, naturally you have to have intimate contact and knowledge of the assured whom you are guaranteeing to that amount. It turned out that the Bridge was let in two parts. The substructure or the foundation and piers, as we call it, was awarded to Mr. M. S. Hudgins, of Roanoke, Virginia, he being one of our clients. The superstructure, as we call it, which is the steel, was awarded to the Wisconsin Bridge Company. The Wisconsin Bridge Company were awarded the contract and they executed bond in the United States Guarantee Company, whom we represented. The bond was sent to our office to be countersigned and executed in accordance with the present existing law. We immediately found out that the controlling broker was not a licensed resident broker of the State of Virginia. We immediately notified the United States Guarantee Company that we would be unable to allow him any commission whatsoever, in view of his not being licensed, and that we would have to consider the same as business of our office unless he

[fol. 917] qualified and obtained a license as a non-resident broker in accordance with the law before the contract was awarded; if he did this, we would make a division of commission in accordance with the law—which we still feel was excessive for our rendering no service, but, be that as it may, we would have no option whatsoever but to charge him fifty percent commission. If he did not qualify as a non-resident licensed broker, we would charge the full commission that we would, the same as if he has been one of our clients.

I do not think that we would be entitled to the full commission on that bond when we rendered no service, knew nothing of the financial standing of the Wisconsin Bridge Company. We could not obligate them to a contract bond involving $150,000, because of no knowledge, but, nevertheless, we would be necessitated to retain full commission on business on which we had not rendered any outstanding service. Just because the bridge happened to be in the City of Roanoke and the bridge that I cross daily, I do not feel, entitled me to the insurance commission on it, when all bidders had a fair and equal chance to secure the contract. We had concerns operating throughout the 48 states. It is not necessary that they make their bond connections with the company that can't serve them in all 48 States, and a local agent is not qualified, unless he is domiciled in the home office of that company, to properly service it, in my opinion.

Q. Did you lose that business?

A. No, sir, we countersigned it.

Q. And got all of the commission?

[fol. 918] A. No, sir. He qualified as a non-resident broker and we got fifty-percent commission for writing our name six times.

Q. You would not hold yourself responsible to render any service in that case, if you were called on in the event of a claim or anything of that kind, would you?

A. If we could render service, I think so, but I do not think that we rendered service commensurate with the return that we got and, funny as it might sound, I do not think we earned the money, I do not think we are entitled to it.

Q. Suppose there is a loss in that case and there is a whole lot of work and they call on you to do it?

A. They would never go to a local agent to straighten out a loss on a bond.

Q. How do you know they would not?

A. I have never heard of them straightening out a big bridge contract loss. They generally call on the attorneys because of the litigation involved.

Q. Suppose they did not get into litigation?

A. Well, it would not be much of a claim where you just turned the loss over to the local agent and he adjusted it.

Q. It might not be a large claim or involve a lot of work to get it settled.

A. As a general rule, bond claims are large or not at all.

Q. Suppose there were some claim against the contractor and they asserted a claim against the bonding company in connection with that, and the bonding company was anxious [fol. 919] to get the claim settled and not have any suit about it, or maybe a small suit, and they requested your advice in the matter; wouldn't you feel it was incumbent on you to render that?

A. We would feel there was an obligation on us to render it, but, in the first place, I do not think a local agent is qualified to do that. I say that with reservation, with all of them here present. But if it was a bond loss, we would refer it to our company attorneys in Roanoke and it would be handled by them.

Q. You mean, you would not render any service?

A. No, we would render all we could.

Q. But you don't think you could render any to them?

A. Not on a big bond loss.

Q. You don't think you would be competent to render any service in connection with the bond even if the company called on you for it?

A. Yes, sir, I think we would be able to render service.

Q. What service could you render in connection with the bond?

A. Well, it would depend on what the specific service was.

Q. Do you mean there is no service at all on a bond of that kind?

A. A great deal of it.

Q. Don't you think that the scale of commissions allowed agents on bonds of that kind ought to be greatly reduced then?

[fol. 920] A. I don't think so, because I think it is the

most expensive form of business put on your books, but all of that service is rendered before the contract is awarded.

Q. Suppose the contractor had come directly to your office and said he wanted the bond written, and you had left it to the company to investigate the financial status of the contractor in his home place; would you feel that you were entitled to the premium?

A. If he came to us and asked us to write the bond; the first thing, we would ask for a financial statement. If he could give us a financial statement and was qualified as an officer of the company to give the financial statement which we could assume to be correct, we would immediately take it up with our bonding representative and tell him that we had a contract bond to execute for this concern on a basis of so much. You then have to find the amount of unfinished work he has on hand, the total amount of bond coverage that you would allow him over all, commensurate with the statement that he has presented. Then it would be up to the company that was going to write the bond to write us to execute that bond for him.

Q. What is the next thing you would do?

A. Find out as to his ability to do such a job.

Q. How would you find out?

A. Through any medium that was available, either through knowledge of other people in like work with business comparable to him, the amount of work that he had on hand, whether he completed that properly and efficiently, [fol. 921] whether he defaulted in anything, whether he had any uncompleted jobs, had compromised any jobs, and a general run of knowledge, so that you are as familiar with his business as you can possibly be to guarantee the contract involved of hundreds of thousands of dollars.

Q. Would you have that investigation made by the company, or do it yourself?

A. We do it ourselves, just as soon as we can—build it up to as great a degree of perfection as possible, and have the company add what they can add, which, in a great many cases, is more than we can get unless it is a concern that we are very familiar with.

Q. I understood you to say in the early part of your testimony about this bridge bond that there wasn't anything you could do about it, and now you say you would find out; which is correct?

A. No, sir—I am answering your first reference to my statement. I say, in this particular case that I refer to as the Wisconsin Bridge Case, that we knew absolutely nothing about that until after the letting. We do not as yet know a single individual connected with them. If they walked into our office tomorrow, we would not know a single one unless he introduced himself and told us who he was.

[fol. 922] Q. I understood you to say you had no way of knowing about him?

A. We knew nothing about the man until after the bids were received.

Q. Yet, even under those circumstances, you could have found out something about him when the contract was sent to you for countersignature, could you not?

A. We did endeavor to get in touch with him through mail, without going to Milwaukee, Wisconsin, and we heard absolutely nothing in reply.

Q. Then you went ahead and issued the bond anyway?

A. Under instructions from the United States Guarantee Company.

Q. And you did not do anything about finding out whether it was a proper bond to issue?

A. No, sir. They said to execute the bond and we executed it.

Q. And that was all that you did?

A. That was all, sir.

Q. Now, about these countersignatures that you have been making; what does your compensation average in connection with those contracts?

A. Fifty percent of whatever the commission is.

Q. I mean before this law was passed?

A. There has been practically no change.

[fol. 923] Q. In dollars and cents, what is the average amount you would get out of the countersigning of these contracts for these New York brokers on large risks?

A. I again come back to the question that we do not term it "countersignature", in that we execute the policies in our office.

Q. You countersign in your office?

A. We execute them.

Q. You mean surety or casualty companies?

A. All companies.

Q. Casualty, as well?

A. Yes, sir. We have to make application to the Depart-

ment of Insurance, and they will license us and send us a copy of the license designating us as agent for those companies. We then have authority from those companies relative to binding them or committing them on risks. The broker is not an agent for the company that he represents in our office. He obtains the business, sends it to our office, and we designate in what companies and how many of them the risk shall be divided. The policies are prepared with his form attached, at the proper rate and premium, we execute the policies under our authority with the company, and send them to the broker. As an illustration, an agent for the United States Guarantee Company could execute a bond or contract for that company but the same would not be valid unless countersigned by an agent for the same company in [fol. 924] the State of Virginia, in accordance with the law. The agent for the United States Guarantee Company would have to execute the contract or bond. It would then be sent to us merely for countersignature, which would make it valid under the law.

Q. I suppose you have both types of business come to you, do you not, or does all of your business in which you countersign contracts and policies consist of those which you prepare in the office yourself?

A. The usual practice is for our agency to execute, rather than countersign.

Q. In other words, you sign them under a power of attorney as agent and also countersign them as resident agent?

A. You don't have to countersign them if you are licensed to do business in the State.

Q. Are these contracts which you execute usually prepared in your office, or are they sent to you already prepared?

A. The policies are in blank, serially numbered, for which we are accountable. The form which gives you the coverage that you are committing the company to is either prepared by us, when it is direct business to our office, or is prepared by the controlling broker or agent when it is sent to us.

Q. Is the paper sent to you complete, attached to the printed form, or do you attach those to the printed form after they reach your office, when they come in from out of the State?

[fol. 925] A. I say, we have a stack of policies for all companies in serial numbers that we are charged with. We have to account for each one of those policies in succession

as we use them. If a risk comes to us from a licensed broker outside of the State to cover the Viscose Corporation, as an illustration, he will send us the prepared form from his office for coverage that he is affording under that contract. We accept his form, use it, complete the policy, send one copy to the Virginia Insurance Rating Bureau for their stamp of approval as to the proper form, proper coverage, and cost under the proper rate. If the same is in order, they then, in turn, forward it to the company with whom the business was placed.

Q. You say you complete the policy; do you paste this form that is sent into you by the non-resident broker on one of your regular blanks?

A. We use the blank policy, put the date and expiration and what it covers on the back of it, together with the name of the assured. The policies are written in triplicate, the original policy and what we call two daily reports. The policy is completed in one operation. Inside we put the amount of insurance at risk, the rate, and the premium. We put the name of the assured, the term, from March 8, 1939 to 1940, if it is one year, or three years, or whatever it may be, paste the form onto the policy and on each copy of the daily report, sign it Charles Lunsford & Sons by us [fol. 926] as agents, send the policy to the broker, send one copy of the form of coverage to the Virginia Insurance Rating Bureau, retaining one copy in our office.

Q. Does that have reference to fire policies, also?

A. That was fire policies I was speaking of.

Q. We are concerned principally in this case with casualty and surety contracts. What is your custom with reference to those?

A. The procedure would be practically the same, other than we send the daily reports One to the company itself here in Richmond, the other going to the Virginia Automobile Rating Bureau, who are supervising the casualty field of insurance.

Q. How long has that Bureau been in existence?

A. The Virginia Insurance Rating Bureau has been in existence as long as I have been in business. I think that the casualty bureau was only chartered about four or five years ago, but I don't remember correctly.

Q. Now, how about bonds that are sent to you for execution? Are they sent prepared, or do you prepare those

bonds or do anything except sign them, or what is your function in connection with those?

A. As a rule, a contract and the bond are all one; that is as a rule. There might be three or four different copies, but as a rule the contract and the bond are one and the same. We complete the bond as to the name of the assured [fol. 927] and the company that is obligating itself, and the amount, citing the work to be performed. It is then signed by the corporation, or an officer of the company and its secretary, which binds them as principal. We then execute it in behalf of the bonding company under the power of attorney we have and attach a copy of our power of attorney to the bond, showing that we have proper authority to execute it, together with the company seal that is placed on the bond.

Q. Now, this bridge bond that you have reference to: was that prepared in your office, or was it sent to you already prepared for your countersignature?

A. It was sent to us already prepared.

Q. That is frequently the case with matters that you get in your office from the companies, isn't it, or was this a very exceptional case?

A. This was an exceptional case. Of course, we try to control as much business as we can that is going to be written in the State. We don't always do that.

Q. Do you regard this work that you have just described as taking place in your office on business sent to you from outside the State as practically clerical work, or does it involve the exercise of any discretion or ability of any kind?

A. We have cases in our office where we have done as much work as if we controlled the business direct. We have other cases that come into our office where we do nothing more than countersign it and make it applicable [fol. 928] under the law. We have others where we do various degrees of work. All of the work, however, is done at the request of the controlling broker or the agent, and we would not consider for a moment volunteering to contact his assured——

Q. My question was addressed to whether or not all of this work which you do when a policy or a contract comes into your office and you take the contract and paste it on the blank form and mail a copy to the company and to the Insurance Rating Bureau, and whether that involves clerical

work or the exercise of the discretion or ability of an insurance man?

A. At times it involves nothing more than the mere clerical work of getting it out and looking it over after it has been prepared to see that the proper rate was used as given to you by the broker, that the form is signed, that the computation of the premium is correct, and carrying out the orders for the business that you have received.

Q. Then, you have been doing lots more than countersigning under past custom, have you not?

A. No, sir. We do not let a policy of insurance go out of our office—although we think our policywriting department is efficient—without that policy being reviewed by one of the members of the firm who signs that and every policy or contract that goes out.

Q. Do you think that is true of agents generally in the State, or do you think that you have a practice superior to the others?

[fol. 929] A. I can't speak for the other agents of the State, but I certainly do not think that our office is any more efficient or any more capable or does anything other than the average agent should do who conducts an insurance office properly.

Q. Well, you do not believe there is any reputable insurance agent—and by that I mean a commission resident agent—in the State who would treat a thing of that kind as a mere perfunctory matter and sign it as a matter of course without making some investigation, such as you have said your office makes of it, do you?

A No, sir. I do not.

Q. With reference to the fact that your office executes these contracts, is it necessary for the company or the broker to sent it to your office to have it executed, or could that be done just as well without sending it to your office, so far as the executing part is concerned, leaving out of consideration the countersigning?

A. It would have to be executed by an agent in the State.

Q. Well, do all the other agents in the State do the same thing you do with reference to contracts of casualty and surety and fire?

A. I think so.

Q. So, when you drew the distinction between executing and countersigning, it was nothing particularly distinctive of your office, but had reference to all the offices?

A. That is right.

[fol. 930] Q. What is the average compensation in dollars and cents which your office has received from out-of-State brokers on its countersigning business?

A. I would not even like to venture a guess.

Q. What is the smallest amount that you have received that you recall?

A. Well, it would run down less than a dollar.

Q. And what is the largest amount?

A. Well, we must not have gotten any big ones lately because there don't any come to my mind that are outstanding. Of course, if you get a premium that involves a risk of $3,000, you would get $300 commission; if you get one of $10,000, you would get $1,000 commission.

Q. I refer to the time before this 1938 Act was passed.

A. Well, our business has not fluctuated materially either one way or the other since the passage of the bill.

Q. The amount of commissions you have gotten on business you have countersigned for out-of-State brokers has changed, has it not, or the rate of commission has changed, has it not?

A. The rate has not changed appreciably affecting us, no.

Q. You think that on most of the business that has been coming in from out of the State you have been getting fifty percent, anyway?

A. The majority of it, yes, sir.

Q. Prior to the passage of the Act?

[fol. 931] A. Yes, sir.

Q. So, there is nothing unreasonable about that basis of division of fifty percent if it is to be the policy of the State that local agents shall be associated with non-resident brokers in Virginia coverage business? I say, if that is the policy, you would not say that the statutory basis for the division of commission is out of line with the general custom which has prevailed in your office on similar types of business where you have been voluntarily associated?

A. Regardless of whether it has affected the remuneration of our office for execution or countersignature, we think that they have taken away from us a prerogative that makes us retain fifty percent of the commission, when we think it is a privilege that we could exercise. If we have exercised it in the past, we think we have reason to do it and the broker has had reasons to do it, but whether we receive it or don't receive it in the future, we don't think we should

be required by law to state what percentage of commission we should receive, any more than any other business would do. It would be just as applicable, if I may state my opinion, if the medical profession or the legal profession would have a similar law that they would have to retain fifty per-cent of the fee of an associate lawyer or an associate doctor that left a case to them. I think it is a prerogative between the two interested parties.

A. I think that the division of commission should be decided upon by the controlling agent or broker of the business and the executing agent or countersigning agent.

[fol. 932] Q. I understand, Mr. Izard, that you are not in favor of the law and that you think that there ought not to be any legal requirement as to the method of division. My question is directed to the point that, assuming there is to be a law which fixes a basis of division as a matter of law, the basis which has been adopted is not out of line with the practice which has prevailed in your office.

A. It has not materially changed it.

Q. It is not out of line, then, with the general custom; is that correct?

A. Well, very little of our fees is merely countersignature or execution. We are asked by the broker in some cases to render services over and above that.

Q. Why do you suppose he asks you to do that?

A. I suppose it is due to the efficiency of my associates.

Q. But the ability of your associate has nothing to do with the necessity of having local service rendered, does it, if the broker living out of the State is able to render that service himself, and if there is not reason why there should be any local service rendered, he certainly is not in the habit of merely donating money to Mr. Lunsford, or operating an eleemosynary institution for his benefit, is he?

A. I don't think that all agents, either in the State of Virginia or in other States, have the same qualifications. I think that there are plenty of agencies in the State of [fol. 933] Virginia that are excellently qualified to serve any business in the State, and I think that the business of the broker is diverted to those many agencies who are qualified. There are conditions that are fast changing in the business, such as your rules and regulations, your change in your tariff or rates, and it is perfectly possible, and is a fact, I think, that the majority of agents operating in the 48 States probably do not keep in as close contact with the

changes in rate structures, deficiency eliminations, and so forth, as the competent agent in the State can advise him on, and it is a service he renders the broker. I do not think the agent should go to the assured on account of those rate changes or deficiency eliminations which reduce the rate, but he does render a service to the broker by calling those to his attention.

Q. You believe, then, do you not, that a good competent Virginia resident agent should be, as a matter of good practice, associated in all Virginia coverage contracts?

A. I think he should be associated, but the division of commissions should be between the two respective parties at interest.

Q. In other words, the only criticism you have to make of this law is, not because it requires the association of a Virginia resident agent with a non-resident broker, but because you think the law should not undertake to regulate the basis of the division?

A. That is correct.

Q. In other respects you have no complaint to make of the statute; is that true?

—. —.

[fol. 934] Q. Policies which originate in your own office are sent to the Automobil Rating Bureau, are they not?

A. Yes, sir.

Q. You do not regard that as a reason why you should not try to determine the correctness of the premium or any other matter relating to the policy before sending it there, do you?

A. We try to see it is correct before it goes, sir.

Q. Should not that same ruling apply to a countersigning agent, instead of his simply relying on the Insurance Rating Bureau to check up the correctness of the policy?

A. I don't think so, because that is an obligation imposed on the broker or agent who controls the business. We are merely acting in a perfunctory capacity in making the contract legal in this State in compliance with an enacted law.

Q. You think that the effect of the law is merely to make you do perfunctory acts and that you should not do anything more to earn the fifty percent which you receive than merely to countersign the policy. Is that the view you take of it?

A. I think that the acts can be perfunctory I think that the Act can require service, but think that this service should be rendered when and if asked for by the broker or controlling agent of the business.

Q. Your principal thought seems to be, Mr. Izard, that this statute which undertakes to regulate the business of insurance in the State so greatly impinges on your liberty to transact business with these New York brokers with whom [fol. 935] you have been dealing that it is in violation of your constitutional rights is that correct?

Q. I have always considered that any contracting parties should have some say-so in the contractual obligations or relations of each to the other.

Q. Mr. Izard, I believe you stated that you thought the effect of this law would be the losing of business by the insurance agents; is that correct?

A. I recall making that statement, because I personally think that it will increase the agency representation of mutual companies, which are direct competitors of ours, in view of the fact that this bill is not operative as far as the mutual companies are concerned.

Q. The fact that you do think it would lose business for your office is a very material fact, is it not, in your conclusion as to the wisdom of the law?

A. Nothing more, sir; than the normal loss of business that we sustain. I think it will increase competitors in the form of additional agents, as formerly stated, by there being more mutual agents, in view of the fact that the law does not apply to mutual companies.

Q. I believe you used that argument with the members of the agents association who were in favor of the passage of the law, did you not?

A. Yes, sir.

Q. And you were unable to convince them that your views were correct on that point?

[fol. 936] A. I was unable to convince them on any one of my three objections.

Q. Does your agency at Roanoke do any countersigning for the companies or non-resident brokers for business negotiated outside of Virginia, involving risks not located in Roanoke or Roanoke County or within fifteen or twenty miles of Roanoke?

A. I do not remember of countersigning a policy. We execute the policies that are sent to us.

Q. Well, we won't quibble about terms; you can use any term you desire. What I have reference to is this business sent to you outside of the State, either by a company you represent or by a non-resident broker.

A. We respect the locality of the company and the agent where the risk is, and I can cite you case after case where we have had clients move from Roanoke to the City of Richmond and we have immediately referred it to the agent for the company in Richmond, and gone even further and told them that on renewal he could take the business and solicit it and we would be very glad indeed for him to get it. I can show you from the records other similar business that has moved to our city and they still control it, either one of which, I think, is a matter of personal prerogative of agents.

Q. Do you have reference to fire insurance business, or casualty business, or both?

A. Business as a whole.

Q. Does that rule apply to casualty business, generally, respecting the rights of the local agent to business covering in his territory?

[fol. 937] A. I think it does with the majority of outstanding companies. I think they respect the territory of the agent.

Q. Do the companies you represent which are in the casualty and surety business respect your territorial rights as to business originating outside of Virginia?

A. I don't know whether they are imposing on me or not. As far as I know, they are respecting my territorial rights.

Q. It is your understanding, then, that the companies you represent recognize your right to be associated with and participate in any business covering in the territory in which you represent the companies; is that true? Is that your understanding of the practice of the companies you represent, or not?

A. As far as I personally know, my territorial rights, whatever they may be, are being observed by the companies that I represent, and I think it is a common practice for the companies to recognize the territorial rights of the agents as they are constituted.

Q. When you say "territorial rights", what do you mean by that?

A. As I understand them: I am a licensed agent in the State of Virginia and have the privilege of conducting busi-

ness and soliciting business anywhere in the State of Virginia. I do not think that the Insurance Department confines me to any county or where I shall solicit business. Now, the companies may have certain territorial limitations where they won't permit me to solicit business, in order to protect their other agent in that locality, and unless I [fol. 938] could refer to my contracts with my companies, I would not say exactly where my territorial rights are.

Q. I did not have reference to where your contract is, but to what rights you have within your territory. When this subject began, you spoke of having recognized the territorial rights of agents in Richmond to handle the business of persons moving from Roanoke to Richmond, and stated that you had recognized the rights of those agents to handle the business coming within their territory. You subsequently stated that you thought all reputable casualty companies respected the territorial rights of their agents. I assumed you were referring to the same sort of rights that you had reference to in your previous answers. Now, if you did not have reference to the right to participate in business inside of the territory of the agent, I am simply asking you what rights you did refer to when you used that expression?

A. I do not think that any of the outstanding companies would have an agent in Roanoke solicit individual business confined in the City of Richmond and ignore the rights of the Richmond agent. I do not think that the companies would ignore the rights of a Roanoke agent and permit the Richmond agent to write it in Roanoke unless they sent it to a qualified agent for the company who wrote it for the Richmond agent's account, or the Richmond agent who sent it for the Roanoke company's account. That was what I meant by respecting the rights of the localities.

Q. In other words, you mean that the reputable companies would not permit an agent in Richmond to write a [fol. 939] risk covering in your territory, in Roanoke?

A. Domiciled in Roanoke, unless it had the approval of their agent in Roanoke who would, no doubt, be glad to give his consent.

Q. That is your idea of a right that you have as regards intrastate business, is it?

A. That is correct, plus the rulings of the various local boards of communities who set up their own rights as to what can be written in that community and what cannot.

Q. Do you have reference to fire or casualty business?

A. Any form of business, I think, it is applicable to.

Q. Then, as I understand that, you consider that you have the right, and the exclusive right, insofar as intrastate business is concerned, to write Roanoke risks; am I correct or not in my interpretation of your answer?

A. I think that the Insurance Department has licensed me to solicit anywhere in the State of Virginia, and I think the rules, practices, and regulations restrict that broad right and I would have to be governed by each case as it came up. I think they have a local board ruling that any business that covers in Richmond has to be written through their local board at a brokerage commission or reciprocal commission, or anything you want.

Q. Do you think that applies to the casualty business?

A. As far as I know.

Q. Restricting this question, then, to Roanoke, if a Richmond agent representing a casualty insurance com-[fol. 940] pany wrote a Roanoke risk, would the Roanoke agent who happened to represent the company writing the risk feel that their rights were violated insofar as their relations with their respective companies were concerned?

A. We do not have a local board in Roanoke similar to the one in Richmond, that covers the same situation, and I will state into the record that I am sorry that we do not. We would only feel that the company who would permit it had overlooked an act of courtesy that they could have given us, but that would be a matter between the company and the agent in Richmond as to whether they wanted him to

Q. Do you understand it to be the custom in Virginia that the local agent is entitled to participate in risks covering in his territory?

A. I again state that, as I understand it, there is no commission arrangement compulsory between agents within the State. If such is the case, an agent could write in any territory and receive the full commission, as far as his license with the State is concerned, but he has other obligations, such as respect of territory, which, however, are a matter of policy between the agent and the company involved. I do not know what the territorial rights of the companies operating in the State are.

Q. Are you familiar with the territorial rights, if any,

of agents are as to companies they represent (I refer to casualty companies), insofar as their territories are concerned?

[fol. 941] A. I know that if you write in a territory where you are not qualified to write, they will call your attention to it very promptly.

Q. Do you mean that the company restricts the territory within which you can write?

A. Yes. I think there are certain parts as to where you shall write or where you cannot.

Q. Have you any restriction in your territory that you cannot write for the Fidelity & Casualty Company?

A. We try to write all over the State of Virginia, wherever we can.

Q. So that you would know whether you were "treading on anybody's toes" if you wrote a Richmond risk?

A. If I wrote an individual risk, such as your automobile in Richmond, I would write the agent of the company I put it in and ask if it would be all right to write it. If you want to give me the policy, and not the agent here, where is he being deprived of any privilege or anything at all in having me write it? But I think he is entitled to the courtesy and he should be permitted to acquiesce as to whether I should write it or not.

Q. Is that the custom followed by your office and the larger offices writing casualty risks in Roanoke?

A. I can only speak for my own office, and we treat that as such where it is a definite located risk.

Q. Coming then to business negotiated outside of the State, in these companies that you represent, where the risk is a Roanoke risk, would you feel that the company had [fol. 942] treated you right if they permitted a New York broker to write that business and did not associate you with it at all?

A. If the New York broker can control a risk in my city that I cannot control, either from inability or otherwise, then I do not see where any right has been taken away from me if, through his ability, he can come in and write it. I still think that it should be countersigned in the State of Virginia, but that the commission should be on a reciprocal basis between the broker and the agent.

Q. What would you think about the broker for his not giving you any fee?

A. If I consented to write it for nothing, I think that would be perfectly all right, sir.

Q. Suppose you did not have anything to do with it? How about the company men signing it?

A. What about it?

Q. Where would you come in on any commission on that?

A. I don't reckon I would come in on any commission at all.

Q. Then, you think it ought to be countersigned by a resident agent, do you?

A. Yes, sir.

Q. And you do not think that the company representative should be permitted to furnish the only countersignature necessary?

A. No, sir. That is direct for you.

By Mr. Christian:

Q. You side with him in one part of this case, don't you? [fol. 943] A. I can't help it. I am up here in the interest of the business in the State of Virginia, and I have been cross-examined and criticized. I am big enough and old enough to take it, but I think a big injustice has been done my own agency by it, and I think the agents are always being done an injustice, but I answer that question no because I don't think they are any better than we are. I am not holding any brief for anybody except to see that the business is conducted properly.

Q. Upon what principle do you distinguish your rights, or so-called rights to have some say in business involving a [fol. 944] Roanoke risk, negotiated by a Richmond agent covering in Roanoke, and a case where that risk is negotiated by a New York broker covering in Roanoke? I understood you to say that if a Richmond agent negotiated and wrote a Roanoke risk and your company that you represent permitted that to be done without consulting you that you would feel the company had slighted you, to say the least?

A. Discourteous. That is a good word.

Q. What is that discourtesy based on? Why do you think it would be discourteous?

A. I do not know whether I am correct as a matter of contract, but whether I am or not, I think we should all recognize the larger communities and respect the agent that represents that company in that community. I think if the

agent in Richmond wrote the business in Roanoke—and I can refer to my record as to any number of policies that we write for the agents in Richmond—they allow us ten percent commission. If they requested us we would no doubt write it for nothing as a matter of courtesy but I think it should be a matter to decide between us and the agent as to what compensation we should receive for permitting them to write a risk in Roanoke that they own and control.

Q. You do feel, however, regardless of whether the risk is negiotiated in New York or whether the risk is negotiated in Richmond, if a Roanoke coverage is involved a Roanoke local agent should participate in some manner in that business, do you not?

[fol. 945] A. No, sir. I would like to clarify that, if I can. I think that he should participate in it if he wanted to and I think it should be his prerogative exclusively as to whether he should participate and, if so, to what degree he should participate.

Q. You think then that he should have the right to participate in it if he desires to do so?

A. He should have knowledge of it and have the right if he wanted to.

Q. The choice here is whether the New York broker shall be made to recognize the rights of the Virginia agent on Virginia coverage or whether he shall have the right to ignore the Virginia agent and receive all of the producer's commissions. What would you say as between those two alternatives?

A. I think that the agents and the companies operating in the State of Virginia will both lose the business, or a large portion of it, because I think it will go to what we term non-admitted companies or what we term non-Association companies or to the mutuals. What rights the Virginia agents have, purely and simply because the business is in their locality and they can't control it, I think would be easily rectified by coming back to your reciprocal countersignature law that I have always advocated and let the person who countersigns it in accordance with the state law say what he shall charge for the countersignature, be it nothing, five percent, ten percent or twenty percent.

[fol. 946] Q. Mr. Adair has testified in this case that practically all of the countersigning done in Virginia by his company has been done through his office without the payment

of any commission to anybody. What do you think of that practice?

A. I do not consider that because a risk is going to be built in the City of Roanoke, such as the Wasena Bridge that I referred to, that gives me the all-exclusive privilege of participating in the commission on that bridge because it is in the confines of the City of Roanoke. If I could have controlled the business I would have done so. I exerted every effort that I could to do so. If any agent in the City of Richmond, Norfolk, or anywhere else, could have controlled it, he would have done so. If the agent in Virginia had controlled it I don't think I would have been entitled — a penny's worth of commission, I wouldn't have gotten a penny's worth of commission, I would never have known who had written it unless I had gone to the State Highway Department and seen who countersigned the bond. So it is a question of whether you are going to enrich your own coffers. I don't see where it makes any difference at all. I think the business should be countersigned and I hate to keep reiterating the same thing but I think it should be reciprocal and not say you have got to charge somebody so much, and so forth.

Q. I was just calling your attention to the practice which had been followed by one of the companies that you represent under this reciprocal rule which you are advocating and which they have ignored almost entirely and I ask you to [fol. 947] state whether or not that is in conformity with your former statements in this case that you think the resident agent has some rights in this regard which should be respected and if you are in accord with that practice or if that is what you call reciprocating?

A. If the company which you have stated has done such a thing, I do not believe for a moment that I have been deprived of a nickel's worth of commission that I was rightly entitled to. Where the business covered and whose territorial rights it was, I don't think anybody could say unless you saw the coverage and knew where it was and knew where it was domiciled. Just because it is in the State of Virginia—if you are going to have all agents in the state fighting for that commission because it is at Norfolk or Richmond or Roanoke or Bristol or where, then how in the world are you going to say who is going to get the commission and who is not. I come back to the point that if they all tried to obtain just as much business as we legitimately

and properly can, then I don't think we have got much kick coming to us for occasionally having a policy countersigned in the state.

Q. When why do you think the local resident agent should be required to countersign it?

A. It is nothing more than to know what business is coming into the state.

Q. Is that the only reason?

A. I said I think he should be cognizant of the risk it is covering and then if he wanted to make any request for commission that is up to him. He could waive it, ask for it or do whatever he wanted to do.

[fol. 948] Q. Then, so far as you are concerned, if the company simply wrote you a letter and said "We have written a risk in your territory through a New York broker and have paid to him all the commissions," that is all that you think ought to be done, isn't it?

A. No, you can't do that under the new law.

Q. I am talking about the old law, the reciprocal law that you favor?

A. If he advises us that he has written it and asks us if it is all right.

Q. Suppose it is not all right?

A. Then you could make them cancel the policy. I don't reckon you could legally but if you were a pretty good agent of theirs I expect they would acquiesce in your request.

Q. Your idea is that under the present practice of the Fidelity & Casualty Company, where you have no knowledge of this risk being written, you don't get a chance to request them not to write it without your participation but if you have to countersign it then you would have an opportunity to make such demands as you thought were proper? Do I understand you correctly?

A. I would like to cite as an illustration that the Fidelity & Casualty Company wrote a bond on a contractor at Franklin, Virginia, on a risk that covered down at Troutville, Virginia. Would we have any right to ask the Fidelity & Casualty Company to give us a commission on that?

Q. I understood you to say sometime ago that you thought you did have that right or you felt you would be slighted if they did it without consulting you.

[fol. 949] A. I said I thought it would be a discourteous act if they wrote a risk for a broker out of the state in my

vicinity somewhere and did not say something to me about it.

Q. You said the same thing also in reference to one inside the state, didn't you, about a Richmond man?

A. I said if a Richmond man came into Roanoke and wrote that, I think he should say something about it or the company should say something about it. If the Richmond agent writes at Troutville I don't see why in the world I control Troutville any more than the Richmond agent does. It is a little hole in the wall down there twenty miles from Roanoke. I certainly don't have any lock on it as I see. I don't see why any of these Richmond agents couldn't write it just the same as I could.

Q. You think that any agent who can get the business is entitled to it; is that right?

A. With the respect and customs that we have been living under.

Q. Do you think the non-resident broker has any more right, or should have as a matter of justice, to monopolize risk in your territory, written by the company that you represent, than a Richmond agent would have to that particular risk?

A. A risk in my town, using that as your illustration, would consist merely of the employees, the plant manager and the operators. They never place the business. If the headquarters, the president and executive officers and those who have the pulse of the business are in Richmond, then [fol. 950] I think by all means the Richmond agent would control the business. If the business was in New York, the plant still in Roanoke, then I think it is perfectly natural and it is a condition is going to exist as long as all of us are here—it is hard to say, but they are going to be in New York where the power is and where the money is and that is where the business is going to be directed.

Q. You say you think that is right unfortunate?

A. I would much rather have them in Roanoke if I could, the head man, and then I could go to them.

Q. You think it is unfortunate that they are in New York?

A. From a personal standpoint I do, yes, sir.

Q. The president of the company is in New York but all the business is done in Virginia, but on account of being a friend of that New York President he gets the business and you think that is proper that he should, do you?

A. I have an equal right to go to New York in an endeavor to get that business. You will get a courteous reception and, if you have the ability and can show some reason why you are entitled to the business, I think you will get it. If you don't have anything, then I think it will remain on a friendship basis between the New York broker and the President who is in New York and I don't think this law or any other law will ever change it to the contrary.

Q. Then if that is true, Mr. Izard, I am not clear in my [fol. 951] understanding of why you *you* think the law should require a resident agent to countersign the policy and give him the right to say whether, if the company writes the policy there, he should participate in it?

A. I would say that as a matter of custom and courtesy but a prerogative that he did not have to exercise unless he wanted to on account of him looking at it the same way you do or his fear that if he didn't he might take some of your business away from you.

Q. If it is a fact that you think the resident agent should have some say in that matter and you merely had a statute on the book that some person who is licensed as a resident agent must countersign the policy and there be no requirement that he shall retain any particular part of the commission, can't you see that a company that desires to evade that statute can employ one person in the state, or a dozen companies could employ one person in the state, have him licensed as a resident agent, let him countersign all of the policies, and completely nullify the purpose of the statute, or do you think that that is true?

A. I think if our business has reached that point where the outstanding companies would conduct their business on that basis, then I think it is a deplorable situation and one that the law will still not remedy.

Q. Why would you think it would be any more deplorable for a salaried officer to sign or countersign these contracts [fol. 952] than it would be to have a man licensed as a resident agent, living in the City of Richmond, who for compensation, say, of twenty-five cents or a dollar or five dollars would countersign all contracts which the company he represents, or the various companies which he might represent, requested him to countersign?

A. If that premium income which you have recited came out of risks located exclusive of any of the main cities in Virginia, then whose territory or whose right was affected

by the companies writing in that territory? I will not attempt to answer. If the risk involved, we will say, the Standard Oil fleet of New York, which I certainly could never control, and they operate one or two trucks in Roanoke, I can't, for the life of me, see why I should receive any commission whatsoever on the insurance on two of the Standard Oil Company's trucks operating in Roanoke when they are operating in forty-eight states of the Union and no telling how many cities of the Union. For that reason I couldn't say whether they had infringed on anybody's territory, had deprived anybody of the opportunity of doing that business or whether anyone had been hurt by that countersignature.

Q. The question I asked you was whether it would be any more deplorable for them to employ one resident agent to do all the countersigning than for them to have it done by their salaried officers?

A. I replied to that once before that I did not believe that the Fidelity & Casualty Company of New York would [fol. 953] resort to any such method of countersignature to comply with the law.

Q. I still ask you whether, in your opinion, it would be any more deplorable to have a resident agent employed for that purpose and licensed for that purpose, without paying him any commissions, than it would be to have a salaried man do it?

A. When I don't think there is a possibility of something existing and until I do know that something exists, I don't see why my views would be of any consequence on it.

Q. Suppose the company is not such a reputable company as you refer to. Maybe some agents are not so fortunate as you are to represent the most reputable companies. What about a company that would descend to such reprehensible tactics as to have the countersigning done by a resident agent without paying him any commission and pay him a mere nominal consideration for it?

A. In the first place, there are plenty of reputable companies and the facilities are available for any reputable agent that wants them. If there are not, and they don't want such representation, then I don't think that this law will correct it. You have got to be inwardly right and conduct yourself accordingly; otherwise I have never seen any law that will make a man change.

Q. Does it protect the resident agent in his locality as to business written in that locality?

A. I don't think so, sir. I think if an agent in Richmond wanted to countersign a policy in Roanoke for any company it would be a valid contract in Virginia and I don't see where [fol. 954] anything other than custom and respect would have been hurt.

Q. I was talking about, where he gets half of the commission. Whether they would follow a practice of that kind is, of course, a matter of conjecture but all of the Branch Managers have testified that in their opinion if the companies are required to pay a Virginia agent fifty percent of the commission they would pay that to the particular agent in the territory where the risk is involved but if you want to look at it from a broader scope, I will say from that standpoint, if you say that a Richmond agent represents the whole state, then it still would be within his territory, wouldn't it?

A. Unless the company felt that he was outside of his territory by going into one of the other cities and that is a matter of territorial agreement between the company and the agent. There are some agents in the state no doubt that can operate all over the whole state, in every city of the state. I venture that assertion. I don't know that that is correct.

Q. The company naturally wouldn't have an agent countersign unless it was within his territory, would they?

A. I don't think that my company would permit me to write a policy in some territory that I didn't have a right to write it in without the agent in that territory acquiescing in it.

Q. The question that I asked you was whether or not if the companies paid fifty percent of the commission on Virginia risks to a Virginia agent, authorized to write that [fol. 955] risk, or if this agent retains fifty percent of the commissions payable to the producer, whether that would operate to protect him in his territory insofar as participating in that business is concerned?

A. I think that he should have the privilege of making a contract with the producer as to what he should have for his services and just because it is in a community and the agent doesn't do anything, then I do not think he is entitled to fifty percent of the commission when the producer has done all the work and serviced the whole thing and you haven't done a thing.

Q. These cases in which you have charged ten percent or more you don't think you were entitled to as a matter of justice?

A. I do not, sir.

Q. And that you ought not to have done it?

A. I had to do it. The law says I must do it.

Q. I am talking about before there was any law on this subject?

A. I made such arrangement as I wanted to.

Q. But you wouldn't really be entitled to anything except a nominal amount for countersigning?

A. Absolutely, very, very, nominal.

Q. And that is all you ever got, wasn't it?

A. Absolutely unless we serviced it. If we serviced it at the request of the broker, then we have been compensated in comparison with the amount of work that we put into it [fol. 956] and the broker has appreciated it and remunerated us accordingly.

Q. I can understand, Mr. Izard, while an agency like yours which has built up a big brokerage connection in New York and has a large business of this kind, might feel that this statute might be hurtful to them in that it would probably require a distribution of the business around over the state or in some other manner. What about the interests of an agent who doesn't have that kind of business like you do and doesn't have any outside brokerage connections? What would you say as to how he would feel or how you would probably feel if you saw the cream of the business in your particular locality going to some man outside and you were not allowed to have any participation in it or any say-so about it?

—. We are a very small agency in Southwest Virginia, just about as far from the hub of the state of Virginia as you could get. The hub of business is centered in Richmond and that applies to the insurance business likewise. What volume of brokerage business we have depends upon what your interpretation of the word "large" is. "Large" can mean a lot of things but until you apply it comparable to something *else*, you don't know what the size of it is. Therefore, if the law remains as it is, as far as our business being affected one way or the other, and any agent in the state being affected one way or the other by increased remuneration, I do not think it will help anybody and I reiterate that I think it will be detrimental to all of us because a lot of the business

will go to non-admitted companies, non-Association companies and mutual companies.

[fol. 957] Q. You can see, can't you, Mr. Izard, that there is a very wide difference in viewpoint between that entertained by an agent who is enjoying what he considers to be a very profitable brokerage connection, and I gathered from your testimony at the outset that you did think you had valuable brokerage connections in New York, and an agent who has no brokerage connections and who sees all of the business in his particular locality, if it be a small locality—or the cream of the business—going to outside brokers. He doesn't lose anything if there is a diminution in business transacted through New York brokers because he doesn't get any of it but if the particular brokers that are associated with you do lose some of that business, then you will lose some of it. If the particular brokers who have been throwing the business to you divert it to other channels, then, of course, you have lost something. So that does make a difference in viewpoint, doesn't it?

A. It makes a difference in viewpoint in this explanation: The largest risk in the City of Roanoke doesn't pay a nickel's worth of commission to us or anybody in the State of Virginia. It is the Viscose Corporation which is written under what we term the F.I.A. F.I.A. is a consolidation of a group of companies that joined together and write extra-preferred textile industries. They are highly competent, have an excellent engineering service, and I have never heard anybody say that the F.I.A. did not fulfill a [fol. 958] useful mission in the insurance business. We don't get any commission out of it and doesn't anybody get any commission, with very few exceptions, on F.I.A. business, but I doubt if any of us would want the F.I.A. to go out of the picture because if they did that would go to the Factory Mutuals which would be much worse.

Q. What is the F.I.A.—a mutual company?

A. No, the F.I.A. is a group of fire companies joined together to write special textile risks.

Q. Fire risks you have reference to?

A. Yes, sir, but I think this talk about the protection of the agents and his rights and where he shall have commissions and where he shan't—you overlook altogether that we are now in an era of national operations—country-wide—and we are out of the horse and buggy stage of

the country store where you had the contact and control that we used to have.

Q. As I understand it, you rather believe in concentrating in New York, and the large centers of that kind, the control of this kind of business or do you favor that?

A. I think that the insuring public of the State of Virginia should get the best possible protection that is afforded at the least possible rate that they should pay. I don't care whether it is written and controlled by a New York broker, a Roanoke agent or where it has emanated from as long as the public is properly taken care of at the least cost possible.

[fol. 959] Q. Then you do favor a general centralization of control in New York, or not?

A. No, sir, I do not favor any central control of business anywhere except that the assured and the public get the best possible protection that we can, be it where it may.

Q. Then you think the guiding principle here should be the interest of the public?

A. I do, sir.

Q. Do you or not think that your office at Roanoke is able to render any valuable service to the public in connection with risks negotiated in New York covering in Roanoke?

A. We can, if we are asked to, and will attempt to. Whether we can or not will be dependent upon the particular case in question.

Q. You are in a better position to do that than a New York broker, in most cases, aren't you?

A. Somebody has got to go to the risk and go into the details. The broker who controls the business has already done that. Therefore, the agent, before he can pass on or criticize the form of the broker who has done that which should be done, he has got to go and follow up and see that the broker has done that and fitted the needs to the risk. The broker has done it; it is his business.

Q. How did he do it without coming down there?

A. He goes down there. They go all over the United States wherever they have risks of any consequence if they hope to hold them.

[fol. 960] Q. Your idea then is that if the broker comes to Roanoke and investigates the matter he is then in as good position as you are to write the policy?

A. As good or better.

Q. In as good or better position?

A. Yes.

Q. But if he doesn't come to Roanoke what do you have to say about it?

A. I don't think any assured of any consequence would deal with a broker that didn't come and survey the property that he was insuring.

Q. Then you think that if he did not come to Roanoke and view the risk he would not be in as good position as the local agent would be to render that service, would he?

A. I couldn't write a risk unless I saw it or unless I sent an engineer or somebody qualified.

Q. I asked you whether or not the broker himself would be as well qualified as you were to service a risk in Roanoke and you said you could not service a risk anywhere else in the particular respects you have mentioned but you did not answer my question as to whether the New York broker could service the Roanoke risk without coming down and seeing it?

A. I think it would be better if you saw the physical risk. I guess you could cover it if you had blue prints, pictures and full detailed information on paper that would give you a complete picture of it rather than seeing the physical properties themselves.

[fol. 961] Q. If you couldn't do that why do you think the New York broker could do it?

A. I amended my statement by adding that unless an engineer or somebody had surveyed it.

Q. You think then that there would have to be an engineer inspect the risk or the broker himself would have to do it?

A. I think it would have to be either physically inspected or inspected through the medium of pictures, graphs, blueprints, diagrams, and so forth, that would give you the same conception of your risk to cover as you would get by a personal inspection.

Q. There would be a great deal of work in preparing all of that information, wouldn't there?

A. There is a great deal of work to every risk that you write of any consequence.

Q. And the man who prepares that would certainly have to be on the ground, wouldn't he?

A. Not necessarily, sir. There are plenty of people that send an engineer to gather it all.

Q. He is on the ground, isn't he?

A. Yes, but he may not be as expensive as the man who is going to put out the finished product.

Q. I said the man who prepared these blue-prints would have to be on the ground, would he not?

A. Any risk of any consequence has blue-prints and pictures and everything.

Q. Wasn't the man who prepared that on the ground—the blue-prints?

[fol. 962] A. They could have been prepared when the building was constructed if there hadn't been any changes made. As a rule when changes are made the blue-prints are changed accordingly.

Q. Then you think they could be prepared in New York just as well as in Roanoke?

A. I said I would rather see the risk myself than resort to blue-prints. Somebody else might take a different view from mine.

Q. What I asked you three or four times was whether or not the man who prepared the blue-prints would have to be on the ground?

A. And I replied unless they had blue-prints from the original date of construction, together with amendments to those blue-prints for the changes, the engineer or somebody would have to go and make a personal inspection to get the blue-prints.

Q. The man who made the original blue-prints—was he on the ground or not, or did he make them in New York—whatever blue-prints you are using; I don't care whether they were made ten years ago or twenty years ago.

A. As a rule, as I see it, a blue-print is prepared out of a man's mind and the building is constructed from the blue-prints.

A. I mean a man that can read a blue-print knows just as much about that building or more so than the average person who would go and look at it.

Q. I believe you are talking about fire insurance, aren't you?

A. I am talking about any form of insurance.

[fol. 963] Q. Do they have blue-prints of all of these trucks that constitute a fleet automobile risk?

A. I didn't know you were confining your talk to automobiles. I was talking about fire, casualty and everything else.

Q. Isn't that casualty?

A. Yes, but also elevator liability is casualty and also owner's and tenant's liability—people that might be hurt about the premises, and also products liability is casualty. All of those can be reflected through the medium of blue-prints and other information. Your trucks are not shown on blue-prints.

Q. How about the pay roll of employees on workmen's compensation?

A. You don't need any blue-prints for that and don't need any inspection for that. You get that right out of the auditor's office or the head bookkeeper or wherever the office is. That can be in New York and obtained better than it can at the plant.

Q. You think that it wouldn't help you to interview the drivers of a fleet or to look at the vehicles or make a study from talking with these people, about the method of conducting that business in connection with a fleet policy?

A. That is through your engineering service. Somebody, to properly service that risk, should inspect the vehicles. He should meet regularly with the drivers, have educational safety programs and talks and pamphlets and it should be done by talking to the drivers and looking at the trucks.

[fol. 964] Q. Who ought to do that?

A. It is done in one or two ways. An agent with an engineer from the company could do it. There are no doubt some agents who are eminently qualified to service all of that. We follow the practice of taking an engineer from the company and having him conduct it with us.

Q. Have you ever seen any broker down in Roanoke who wasn't associated with you, inspecting any of these Roanoke risks?

A. Yes, there have been two or three down there trying to get business that I knew and it worried me quite a bit to find out what they were down there on.

Q. Do you remember any other cases than that?

A. Yes, I have seen quite a few there that I happened to know. I see them up there quite often. I see brother agents in the state of Virginia up there. I think they have got a perfect right to come up there. I would hate to think I didn't have a right to come to Richmond.

Q. Where did those brokers live?

A. I don't recall any particular name right offhand. One of them was Bob Greathead. He is with Marsh & McLen-

nan. I didn't make any mental note to retain as to who they were.

Q. What I asked you was whether you ever knew any of them to come down there and examine and inspect a risk for the purpose of preparing a policy?

A. I have not accompanied personally any broker outside of the state, to my knowledge, on a risk in Roanoke.

[fol. 965] Q. Did you ever know or hear of any broker coming to Roanoke and inspecting a risk with a view of preparing a policy?

A. I have said I have seen them there but what they were there for I did not know.

Q. You need not answer this question unless you want to, although Mr. Christian insisted on Mr. Tabb answering. I was wondering whether you would mind stating the premium volume of your office?

A. The Virginia Association of Insurance Agents asked the agents of the state to qualify themselves as to the volume of business they do and pay the dues accordingly. We qualified ourselves in the top bracket. We pay $150 a year and that means all business in excess of $250,000. I think it is in excess of $250,000, and I understand, which I cannot substantiate but the record will, that we are one of twelve who pay such a rate. Does that answer it satisfactorily?

Redirect examination.

By Mr. Christian:

Q. When you used the term "execute a policy" rather than "countersign a policy", did you mean to say you have made yourself responsible to the company for having bound it on the risk as the underwriter of it?

A. We have the power of committing a company to a risk. I have just made the difference between executing a policy, which is taking the blank policy and executing it by Charles Lunsford & Sons, by one of the members of the firm, and that makes the contract valid. Some other agent for the company, licensed to do business outside of the state, can execute it but it is not valid until it is countersigned by an [fol. 966] agent in the state and then we would countersign it "Charles Lunsford & Sons," but we wouldn't consider that we had executed it because the other agent had executed it.

Q. The record in this case includes some policies that say that the policy shall not be binding on the company until it is countersigned. There is no space on the form for the signature of but one agent. There is no space on the form that has been introduced in this record for an executing agent and another space for a countersigning agent, but just the one space. Do policies sometimes come to you executed by another agent on behalf of the company in a space other than that for countersignature?

A. I think the policies will probably have to be changed. Countersigning in that respect meant execution until this Bill was passed, as I understand it. Bond cases have come up since the Bill has been passed and if they are executed by an agent for the company outside of the state who has a right to bind the company, then they write in there "Countersigned at Roanoke, Virginia," or "Richmond, Virginia," by the agent in the city of Roanoke.

Q. In other words, in this Wasena Bridge case a Wisconsin agent signed the bond which was attached to that bridge superstructure contract and then there was a space typed out on the form for you to sign as a countersigning agent?

A. No, sir, we executed it for the Wisconsin agent. We would have countersigned it if he had previously executed it. We executed it, but how I tried to make myself clear was that we had no authority or anything to do with the countersigning of it or the execution of it. We knew nothing [fol. 967] about the risk until the company wired us to execute that bond.

Q. In a case like that you don't feel you have any responsibility to anybody except to sign it when the company tells you to; is that right?

A. It doesn't make a particle of difference to me what it is. If they tell me to execute it for them, I will do so.

Q. There is no state law that says you shouldn't do it; is that right?

A. It says I have to retain fifty percent of the commission if he is a licensed broker. That is an obligation that they impose on me.

Q. I know that before this June, 1938, law became effective it was frequently the case that both from producers away from Roanoke and from companies that you were often asked to become associated in fire risks situated in Roanoke and I ask you to confirm the fact that that is true,

both from other brokers and agents in and out of the state away from Roanoke and companies you have been asked to become associated on fire risks and got a commission; is that right?

A. We have been asked to countersign or execute policies by both the broker and the company, both prior to the Bill and after the Bill.

Q. That is a matter of frequent occurrence in the fire business, isn't it?

A. Well, it is not as frequent as we would like to have it.

Q. State whether it is customary, according to your understanding, for the non-resident producer, whether out of [fol. 968] the state of Virginia or in the state of Virginia, covering workmen's compensation risks in the Roanoke vicinity or fleets, units of which are around there, or chain stores in Roanoke or whatnot, to associate some Roanoke agent with him.

A. If that risk had a location in the City of Roanoke, domiciled and with the head office here in Richmond, and Mr. Tabb controlled the risk, I personally don't think that any agent in the City of Roanoke would be entitled to one penny of commission on that risk because it happened to be domiciled in Richmond.

Q. I am not asking you what you think he would be entitled to. I am asking you what you think, from your knowledge of the business, would be a customary thing for Mr. Tabb in that case to do, to associate a Roanoke agent with him and divide the commission or ordinarily if he would rely on the engineering and claim departments.

A. If he has a location in every town in the State of Virginia, I still don't think that any agent in that locality can render him any service or is entitled to any commission because that service can be given him by the companies, which they are very glad indeed to do, and which I say, with all respect, I think will be done more effectively and efficiently by the company man than by the agent, be it me or somebody else. If he operates in seven states I think the condition is still true, that not an agent in the other seven states is entitled to any commission because it happens to be in that locality. This gentleman that you have mentioned has got to go over all of that; he has to do it; it is his responsibility. If he wants to ask the cooperation of an agent in the State of Virginia or North Carolina or South Carolina I think he could do so but I think the com-

[fol. 969] mission should be agreeable to the two, commensurate with the service that the other agent might give him.

Recross-examination.

By Mr. Staples:

Q. With reference to this bridge bond you spoke of in Roanoke about which Mr. Christian just asked you a question or two, I believe you stated that if the company directed you to sign the bond that that was all you needed in order to go ahead and execute it on behalf of the company and that you would not give any consideration to any matters in connection with it at all.

A. That is my authority.

Q. Is that what you would do and is that what you did do in this case?

A. I wouldn't execute it without authority from the company. They gave me the authority and I executed it.

Q. I say you did have authority and instructions from the company to execute it, didn't you?

A. Certainly.

Q. And did you do anything at all except just execute the bond and not examine it or pay any attention to it?

A. Certainly I examined it. I looked it over. I prepared it, as far as writing the name in and the date, but I had nothing to do with the amount that was involved.

Q. You were interested to see that that contract was properly drawn and in proper shape, weren't you?

A. Well, I had to fill in "United States Guarantee Company of New York" and sign my name to it in Roanoke, [fol. 970] Virginia, and put the seal on it and put my power of attorney on it, if you call that any unusual service.

Q. And you think that just to fill in an ordinary blank bond is all that an agent is required to do in that case and not investigate the contracts or anything of that kind to see whether the blank bond or the printed bond is adequate to cover the particular situation?

A. The bond is prepared through the State Highway Department or P.W.A. and they are very tight and you are either going to execute them or not going to execute them. I don't know of any bonding company that is not familiar with them. They are all standardized bonds and we simply have a very small part in the actual preparation of the bond. The work on bonds is all on getting the bond accepted. The

actual preparation of it anyone could do who has ever filled in two or three of them.

Q. Who is protected by this bond?

A. The City of Roanoke.

Q. Then you have no thought in preparing the bond or in executing it as to whether this particular printed form is adequate to protect the interests of the city or did you have such thought in mind?

A. Yes, sir, I had that much interest and that much curiosity. I previously executed one for my assured, Mr. M. W. Hudgins. I was fully conversant with it and it was as tight a bond as I have ever put my signature on in my life. The City of Roanoke didn't have a loophole in it that they wouldn't be fully protected on.

Q. Then you really did give some consideration to the matter?

[fol. 971] A. I read the bond. I read everything that I sign.

Q. You have to give some thought to reach the conclusion you have just expressed, don't you?

A. Well, I had to read it. It wasn't new.

Q. Did you have to do any thinking about it or did you read it without thinking?

A. I thought it was about the tightest instrument I had ever seen a company write.

Q. Then you did some thinking?

A. I don't think you could read anything and not take it in.

Q. So you did give enough consideration and thought to this bond to come to the conclusion that it was absolutely watertight and protected the obligee in the bond, did you not?

A. Yes, sir, but I would like to put this in, that that service, comparable to whoever passed on the bond, was nothing at all.

JOHN G. YANCEY, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Of what place in Virginia are you a resident, Mr. Yancey?

A. Harrisonburg, Virginia.

Q. What is the name of your company or your corporation or firm?

A. W. L. Dechert Corporation.

Q. With what insurance companies does your agency or [fol. 972] its personnel have agency contracts such as that it represents those companies as their agents in Virginia?

A. Twenty-five fire companies and four casualty companies.

Q. Do you have, either in the name of your agency or individuals connected with it, resident agents' licenses under the 1938 Act for the representation of these various companies?

A. We do.

Q. Please say what are the names of the casualty companies?

A. Fidelity and Deposit Company of Maryland, Employers Liability of Boston, American Employers, Hartford Steam Boiler, Hartford Livestock, North American Inland Marine.

Q. North American Inland Marine Insurance Company?

A. The inland marine department that writes the casualty business for the Insurance Company of North America.

Q. How long have you been connected with the Dechert Corporation?

A. Sixteen years in August.

Q. Am I correct that Mr. Dechert himself was the chief organizer and first president of the Association of Virginia Insurance Agents, Inc.?

A. Yes.

Q. Did Mr. Dechert continue connected actively with the Association until his retirement from the business?

A. No, sir, he got out of the Association before 1923.

Q. When was your agency again represented in the Association?

[fol. 973] A. I think it was in 1934.

Q. You were out eleven years then?

A. Approximately.

Q. When did you get out again?

A. In the late winter or early spring of 1938.

Q. Just last year?

A. Yes.

Q. I hand you a paper dated January 3, 1938, addressed [fol. 974] "Dear Member" and will ask you to say whether

this is a bulletin you received from that Association?

A. It is.

Q. Will you please read it into this record.

A. "Bulletin

"Virginia Association of Insurance Agents, Inc.
"Oscar H. West, Manager
"703-704 Atlantic Life Building
"Phone 3-7977

"Richmond Va., January 3, 1938.

"DEAR MEMBER:

"The Legislative Committee of your Association has prepared several bills for presentation to the coming session of the General Assembly. These changes have the approval of the Bureau of Insurance. We are confident that the two bills, copies of which are attached hereto, are of great importance to the agents of Virginia.

"We understand these bills, if passed, will have the following effect:

(4222) Definitely define 'Local Agent', 'Special Agent', 'Solicitor' and 'Company Representative'; specify who has countersignature privilege in Virginia. (4226A) Definitely establish the status of a non-resident broker in this State; fix his commissions at not exceeding fifty percentum of the regular local agent's commission.

"This will stop the existing practice of Special Agents and/or Company representatives countersigning for non-resident brokers policies of insurance on surety covering [fol. 975] persons or property in this State, and *save for Virginia Local Agents* commission, justly theirs, on such brokered business.

"To insure success of this program we need the help of Association members. Please personally call on *your representatives* in the Legislature immediately. Discuss the bills with them, and if possible, obtain from them a definite commitment for their support of this legislation. Understand, these laws will *not* affect the public. Make that clear to your Senator and Delegate.

"Then—in the interest of the insurance business—which is your business; for the good of your Association; and in cooperation with the Bureau of Insurance, may I ask that

you let us have your response within five days? Use the form on the bottom of this letter.

"If any angle of these bills or their meaning is not clear, communicate with Manager West and your inquiry will have prompt attention.

"Very truly yours, (Signed) E. T. DeJarnette, Edmund T. DeJarnette, Chairman, Legislative Committee.")

Q. Can you identify similarly as a bulletin received by you on the stationery of this Association the paper I now hand you dated February 10, 1938?

A. I do.

Q. I will ask you to read that communication to the reporter so that he may incorporate it into the record.

[fol. 976] "Virginia Association of Insurance Agents
Incorporated

Fire—Casualty—Surety

Oscar H. West, Sec'y-Manager

704 Atlantic Life Building
Richmond, Va.

February 10, 1938.

"DEAR MEMBER:

"On January 3rd your Legislative Committee sent you copies of two proposed bills which were to re-enact Sections 4222 and 4226A of the Code of Virginia. Since then we found it necessary to re-enact other sections of the Code, and there has now been introduced in the House of Delegates by Delegate Emory P. Barrow, a senior member of the Insurance and Banking Committee, House Bill No. 151. Last Tuesday this bill was unanimously approved by the Committee of Insurance and Banking of the House and is now on the Calendar of the House.

"Briefly, House Bill No. 151 definitely defines a resident agent (such as you and I), state agent, special agent and company representative, and specifically states that all insurance contracts except life, title and ocean marine must be countersigned by a resident agent, and the resident agents are to share in the commission on all business placed in the state by outside brokers. This bill should bring many thousands of dollars in commissions to the agents of

Virginia. The bill has the approval of the Insurance Department of the State and your Association. It does not affect the public interest and specifically excepts mutual and reciprocal companies.

"In order to secure the passage of this bill in the House [fol. 977] and Senate your Committee urges you to see, wire or write your Delegate and Senator before noon Monday, February 14th. We are very hopeful of the passage of this bill, but need your assistance by notifying your representatives of your wishes in regard to it.

"The success of your Association depends upon your co-operation in immediately communicating with your representatives. Please act at once and advise us of any reply that you may receive from them.

"Very truly yours, (Signed) E. T. DeJarnette, Edmund T. DeJarnette, Chairman Legislative Committee.")

Q. Had you had the advantage, at the time your resignation from the Association became effective, of an inspection of House Bill 151 which the Association promoted at the 1938 Session of the General Assembly?

A. I had a supposed draft of the law or Bill. I don't know whether that was the one that was finally passed or not.

Q. I want you to read this resolution and say whether you are going to live up to it and also whether you believe other agents are going to live up to it and also say whether you could live up to it or believe other agents could live up to it if they wanted to and try to.

A. I would not be governed by it.

Q. Please say why you would not be governed by it?

A. In the first place, under what I have always understood were the ethics of the business, an agent to whom [fol. 978] brokerage business is submitted is unethical if he approaches the assured at all. In the second place, it is conceded that the broker controls the business and he knows what he is doing and it is up to me to return the contract to him the way he wants it written. I am not responsible for the contract as to its coverage and rates.

Q. Would you feel that it was a practical thing and an advantageous thing to the assured for you, as a countersigning agent, to approach him over the head of the agent or broker whom he had selected to place the contract with

and undertake to discuss with him the good and bad of the coverage and what changes he should make and so on?

A. I don't think it would do him any good and I think it would confuse his insurance.

Q. Could you elaborate that a little bit or illustrate it by experiences you have had or the viewpoints that you have entertained in any business you have had covering outside of Virginia and that you produced in Virginia?

A. There have been lines that we controlled, located in states other than Virginia, in which I have done work as to rates and forms and all the necessary details, sending to a resident of the other state an order for insurance with instructions as to rates and forms to be used. If he didn't do it the way I asked him to do it or if he approached my assured I would take the business away from him.

Q. Why would you feel justified in doing that, Mr. Yancey?

A. Because it is my business. The customer has entrusted me to write it.

[fol. 279] Q. Wouldn't you think, if you were a foolish man or a careless man or an incompetent man that it would be a good thing for your customer to have that person in that distant state tell him how foolish you were or tell him what was right, or would you think that would be a case of too many cooks and that no good would come of it?

A. The person to whom the business is submitted for writing has absolutely no business contacting my customer at all. If the customer entrusts the business to me and I am not competent to handle it, that is a matter between the customer and me. I am the one who is held responsible for recovery in case of loss under the contract.

Q. Would it affect your ability, as the producer of the business, to serve your assured if he were receiving advices from numerous people around the country in the locations of coverage or could you go on serving him with the same efficiency, notwithstanding that he was getting his advice from various other people?

A. It would be very confusing in handling the business.

Q. Would you think these people around at the various localities of coverage, without your intimate knowledge of the entire problem, or perhaps lacking some of your knowledge of the desires and wishes of the assured and the peculiarities and ins and outs of his business, would be able to intelligently criticize to the assured your advices to him?

A. Not if I was performing my duty as an agent.

Q. Would you feel, sitting in Harrisonburg, in cases of risks written in New York or Washington or Baltimore, or [fol. 980] wherever the principal office of the assured happened to be, and covering in Virginia, that you could get sufficient knowledge to criticize the recommendations made by the producer of the business in the locality of the principal office of the assured and who had had the personal contact with him?

A. I certainly would not.

Q. When you resigned from this Agents Association was any effort made to keep you in it?

A. Beginning in November, '37, and continuing until January, '38, we had correspondence with the Virginia Association about continuing and during that time I received a copy of this Bill that the State Association was sponsoring and I immediately notified them that under no consideration would I continue my membership in the Association.

Q. During that time, without asking you to throw any bouquets at yourself, but speaking about them, did they refer to you in their efforts to keep you in the Association as one of the leading agencies of the State and to the great value that the Association would expect to derive from your continued support?

A. They did.

Q. Among other people, I believe Stuart Ragland, a member of the Membership Committee, and Oscar West, the Secretary, and Mr. Ewell, the President, communicated with you, trying to keep you in the Association, didn't they?

A. They did.

[fol. 981] Q. Do you have any feeling that you can express here as to whether your willingness to be a member of this Association would be influenced by its sponsorship of this Bill?

A. The change in the ratio of dues and the Association sponsoring this Bill which I felt would be a great detriment to my business, were both contributory to my refusal to continue my membership.

Cross examination.

By Mr. Staples:

Q. Why do you think the Bill would be a great detriment to your business, Mr. Yancey?

A. It has been my observation in the insurance business that brokers who control business and know they control it, will not pay exorbitant amounts to people for simply signing policies and returning them. They will either put them in non-admitted companies or find some way of writing the insurance so they won't have to pay more than they think is just for the service rendered by the signing agent.

Q. And how much of this brokerage business do you have [fol. 982] that comes to you from these out-of-state brokers?

A. In premium volume I couldn't answer in dollars, without referring to my books and making it up, but we do handle seven or eight very large brokerage lines.

Q. What brokers do you deal with?

A. I deal with any that will send me business.

Q. What would be your estimate of the volume of the busines which your office writes through these non-resident brokers in a year?

[fol. 983] A. You mean premium volume? I would say $20,000 or $25,000.

Q. Do you originate much business in Virginia that covers in other states?

A. I would say about three percent of my business.

Q. In the view that you take of the business which has been sent to you through these brokers, you regard them as the owners of the business, do you not?

A. Absolutely.

Q. Isn't it customary in the fire business for the local agent to always receive some part of the commission?

A. For signing the policy?

Q. For looking after the matter at his end of the line where the risk originates in some other part of the state or some other state?

A. Yes, sir.

Q. What do you think of that custom? Is it a good custom or a bad one?

A. I think the local agent signing the policy is entitled to some compensation for what he does. I believe his compensation should be based on the amount of service he renders and not on some arbitrary amount that the law says.

Q. What is the usual basis of your compensation in this business that is brokered to you?

A. I have written them for from twenty-five to seventy-five percent of the commission.

Q. You being the local agent, received anywhere from twenty-five to seventy-five percent of the total producer's commission?

[fol. 984] A. That is right.

Q. Naturally, if you retained that much of the commission, you thought that you were rendering some very valuable service in connection with that business, did you not?

A. I did where I got seventy-five percent of it.

Q. Even if you only got twenty-five percent you must have rendered some considerable service, didn't you, because the mere signing of your name on a contract, of itself, amounts to nothing, does it?

A. Very little.

Q. It is a mere clerical act, isn't it?

A. There have been some policies I signed where I got twenty-five percent of the commission that I was ashamed to take the money.

Q. Why did you charge the man so much.

A. That is what they said they would give me.

Q. And you weren't turning it down?

A. On a large policy the amount of money you receive, of course, is more on a percentage basis than where the premium involved is small. If you sign a policy with a hundred dollar premium and get twenty-five percent of the commission, which is twenty percent, you get $5. If the premium is $100,000 and I simply sign the policy to accommodate a broker, I wouldn't think of taking twenty-five percent of the commission.

Q. On the basis you are talking about now, if you didn't render any service you probably wouldn't charge him anything, would you?

[fol. 985] A. No, I wouldn't do it for nothing.

Q. What would you charge him—$5? It is just as easy to sign a big policy as it is a little one, isn't it?

A. Yes.

Q. If that is the only service you render, merely signing, you certainly wouldn't think it was any more trouble to sign a large policy than a small one?

A. It isn't.

Q. And would your compensation be the same or would it be greater?

A. I have signed policies for $5 a piece.

Q. Take that case of the $100,000 commission.

A. That was premium—$100,000 premium.

Q. What would the commission be in that case?

A. If it was a fire policy it would be $20,000.

Q. And what is the customary local agent's commission on a fire policy of that kind?

A. Twenty percent.

Q. What does a local agent customarily get who countersigns a policy of that size, produced out of the state?

A. That is a matter of agreement between the agent or was until this law was passed. It was a matter of agreement between the agent and the producer.

Q. In the fire business?

A. Yes, sir.

Q. That is not true all over the state, is it?

A. I thought it was.

[fol. 986] Q. It has been testified to in this case by quite a number of witnesses that the general custom is, in the fire business, for the local agent to get half of the commission where it is produced outside of the state.

A. I think in a great many cases that is so.

Q. Is there any reason that you can think of why the local agent should get that on a fire policy any more than a casualty or surety policy?

A. No, sir.

Q. You think they all stand on the same basis, do you not?

A. If they just sign the policy, yes.

Q. Is there any basis of distinction, so far as you know, between what a local agent should receive in the fire insurance business and what he should receive in the casualty and surety business. I believe you said they all stood on the same basis, so far as you know. Is that correct?

A. I don't see why there should be any difference.

Q. As a matter of fact, Mr. Yancey, isn't it true that in quite a number of lines of casualty insurance, such as workmen's compensation, fleet automobile liability and probably some others, the local agent, if he attends to his business, would really render more service than he would in connection with an ordinary fire risk?

A. Not on a brokerage line.

Q. I mean the service, where he writes it himself, where he originates the business?

A. Yes, in some cases.

[fol. 987] Q. Were your answers in response to Mr. Christian's questions, as to your views respecting this law and

other matters that you told him about, confined to the casualty business or did you have also in mind the fire business when you answered those questions?

A. Either or both.

Redirect examination.

By Mr. Christian:

Q. In these seven or eight big brokerage lines that you have, are any of them casualty lines or are they all fire lines?

A. The seven or eight large lines that I referred to are fire.

C. M. Davison, a witness on behalf of the plaintiffs in rebuttal, being duly sworn testified as follows:

Examined by Mr. Christian:

Q. Will you state your name and position and how long you have occupied it?

A. I am adjuster for the Travelers Insurance Company and have been adjuster for thirty years.

Q. In what city is your headquarters and what is your territory?

A. Richmond, Virginia, is my headquarters and I handle the State of Virginia except Arlington and Fairfax Counties, and I think it is about three counties around Elizabeth City, North Carolina, down there below Norfolk, and about three counties in West Virginia, around Bluefield.

[fol. 988] Q. Do you have to do with the adjustment of claims, or do you have to do with the investigation of claims, or do you have to do with both?

A. I have entire responsibility for the claims of all concerned in Virginia under the various policy contracts.

Q. And that includes investigation and adjustment?

A. It includes investigation and adjustment.

Q. What personnel do you have to assist you?

A. At the present time, I have twelve men and seven full-time girls. Ordinarily I have thirteen men.

Q. Does all your personnel have its headquarters in Richmond, or some elsewhere?

A. I have two men and one girl in Norfolk, one man in Roanoke, and one man with headquarters in Staunton.

The rest of them are in Richmond. Of course, the Richmond men travel around over the territory.

Q. What sort of insurance risks do you have jurisdiction over, life, or fire, or casualty, or more than one?

A. Every form of insurance written by the Travelers, all the contracts, life, accident, casualty, and fire.

Q. What is the average length of employment of the members of your staff, including yourself?

A. Approximately seven and a half years.

Q. Has all this staff been engaged solely in doing this kind of work during the period of its employment by the company?

A. Yes.

Q. To what extent are you and your subordinates com- [fol. 989] pensated in a contingent manner by commissions or otherwise than by straight salary?

A. Not at all.

Q. Please say, as to any particular contract of insurance with which you and your subordinates may become connected, what is the first thing that happens to start your connection with it?

A. We get a report, over the telephone or by mail or by wire, and immediately ask for a registration and immediately start investigation.

Q. From whom do these telegrams, telephone calls, and letters come, the agents or the assureds?

A. They come from both.

Q. When does this type or form of registration come from an agent, and when does it come from the Branch Office?

A. When the agent is the direct Home Office-reporting agency; otherwise, from the Branch Office.

Q. It would come from Mr. Tabb's agency in connection with all casualty forms except health and accident, would it not?

A. Only on business written by Mr. Tabb's office.

Q. I mean, when he had written the business?

A. Yes.

Q. And he reports to the Branch Office on accident and health if he has written it and, therefore, those forms would come from the Branch Office?

A. I think so. That might have been changed; I think he used to report through there, but I am not positive whether he does, or not.

[fol. 990] Q. When this registration comes from a Branch Office, it is because some agent of the company other than Mr. Tabb's agency in Virginia has produced the business?

A. Yes, or, we had better say, from the branch writing the business or from the Home Office, you understand. If it is not written in Virginia, we might get that registration from the Home Office or from some other branch.

Q. In other words, if the business was produced outside of Virginia and covered in Virginia, this registration would come from the Branch Office outside of the State or from the Home Office?

A. Yes.

Q. And what we speak of as "the registration" is simply the giving to you of a record of the fact that the company has the coverage, through the party reporting it to you and giving you notice of the fact that an accident or a loss has arisen or is impending; is that right?

A. The registration does not give us anything except the coverage.

Q. You would have the phone call or letter or telegram telling about the accident, and then that is followed by the registration?

A. Yes, sir.

Q. And you know in what coverage the policy is carried by the company?

A. Yes, sir.

Q. There has been introduced in this case, a form of ac-[fol. 991] cident report used in connection with automobile accident cases. I believe you have equivalent forms in connection with the various types of health and accident insurance, including group health and accident, workmen's compensation and liability contracts, do you not?

A. Yes.

Q. Are these forms of which I have just spoken forms required to be signed by the assured?

A. Yes.

Q. Who gets those forms filled out by the assured?

A. The policy instructs the insured to fill them out and we always request the insured to fill them out and the insured is supposed to fill them out, and the insured practically always signs them.

Q. Where do they come from to you if they originate in Richmond, directly from the assured to a member of the

Claim Department, or from the assured to an agent and then to the Claim Department?

A. I would say ninety percent of them are sent or given directly to a member of the Claim Department. Possibly ten percent of them come through an agent.

Q. Is that true outside of Richmond, as well as in Richmond?

A. Outside of Richmond more of them would come through an agent.

Q. Is this form supposed to have the blank spaces filled in by the assured, describing in his own language what happened?

A. Yes, sir.

Q. At what stage in the doing of your work following the phone call, or the letter, or the telegram telling you of [fol. 992] the accident or the pending loss, do you get the registration?

A. We request it immediately by telephone to Mr. Tabb's office. In fact, in the same conversation that it is reported we will say, "Send us a registration at once."

Q. Do you commence work in the Claim Department before you get the registration, or afterwards?

A. I believe we start on about fifty percent of them before we actually physically get them. We get some assurance that we have the insurance.

Q. At what stage of the work do you get the forms signed by the assured?

A. Immediately.

Q. That is the first thing the Claim Department does after it gets the registration?

A. Well, we get them very often before we get the registration. Sometimes it is an automatic process, Mr. Christian. We order the registration, and depending on how quickly we can get after it, we go ahead.

Q. Then you go ahead and conduct an investigation, as I understand it, through this personnel which you have described, and if it is a very large claim and there is liability and you are able to adjust it on a fair basis without any lawyers being called in, you do it; is that right?

A. Yes, sir. In any kind of case that is reported to us, we immediately start an investigation and make an adjustment just as soon as we can properly evaluate it.

[fol. 993] Q. And if trouble arises about the valuation,

then the lawyers come in, and if you do not settle the claim, you have a law suit; is that right?

A. Yes, sir. Very few of them go into law suits.

Q. Please say in what way, if any, the producing agent substantially participates in assisting your department to render value to the assured in connection with the adjustment of claims.

A. In only a rare instance does he participate in any way, shape, form, or fashion.

Q. Do you ever encounter cases where you do not get proper cooperation from the assured in assisting you to make an investigation or to otherwise protect the interests of the company and the assured?

A. Once in a long while, yes.

Q. In those cases, do you call on the producing agent?

A. Yes, frequently, regardless of whether he is in Virginia, or Ohio, or San Francisco, or New York, or wherever he is.

Q. Now, suppose that your claim is not a very bad claim, but is a claim by an assured, say, in a burglary or plate glass policy, boiler property damage claims, collision insurance, and the like: Does the agent participate any more substantially in the work of your department there than in the other claims?

A. No.

Q. What is there about a producing agent, whether he be in Virginia, or San Francisco, or wherever he is, that gives him the characteristic that enables him to help you when you do not get proper cooperation from the assured? [fol. 994] A. Well, he has had a previous acquaintance with the assured and frequently knows him quite well, and we are perfect strangers to him.

Q. Is he usually a man who enjoys the confidence of the assured and who has some degree of influence over him?

A. Yes.

Q. I believe you said that you do exactly the same work and furnish exactly the same service on claims produced outside of Virginia, covering in Virginia, as you do in connection with those produced inside of Virginia and covering inside of Virginia, but I am not certain that you said that and I ask you to correct me if I am wrong in that understanding.

A. You are not wrong; that is absolutely true.

Q. When these registrations have been made and the time is ripe for the making of an accident report, where does the accident report usually come from in the case of business produced outside of this State and covering in the State?

A. Either from the local representative of the assured or from the producing agent or from the Home Office or from the assured's Home Office.

Q. Do you have any more trouble, according to your experience, in getting to work promptly and efficiently in a case produced outside of the State than you do in a case produced inside of the State?

A. Not if the assured's representative is at hand, but if he is traveling around, we have right much trouble finding him sometimes.

[fol. 995] Q. Well, you would have that same trouble if he was an inside-the-State assured who was traveling around, wouldn't you?

A. Yes.

Q. What do you do after you get a registration and the accident report and the question arises in the Claim Department as to whether the subject matter of the claim report is a casualty covered by the contract in question?

A. Submit it to Hartford for decision.

Q. Do you submit it to Hartford for decision if the business was produced through Mr. Tabb's office?

A. Oh, yes. It makes no difference where it was produced.

Q. Do you communicate with Tabb before you take it up with Hartford?

A. Frequently.

Q. Suppose it is produced in the Branch Office; do you take it up with the Branch Office?

A. Oh, yes.

Q. What do you do if it was produced by a Branch Office outside of Virginia? Do you take it up with that Branch Office before you take it up with Hartford?

A. No; I would send it to Hartford and let them take it up with that office.

Q. Assuming that you have told Mr. Tabb's agency that you do not believe the accident is covered, or that you have a question in your mind that it is covered, what do you ask him to do when you tell him about it.

A. I ask him whether or not he wants to write me a [fol. 996] letter for transmittal to the Home Office asking that consideration be given to coverage for any reason whatsoever. Now, you understand, Mr. Christian, this coverage question comes up possibly twice a year; it is an extremely rare proposition, and it is so rare that it is almost out of the picture, you might say.

Q. Now, what happens when it is produced outside of the State and you raise a coverage question? Do they write back to the producer and ask him whether he wants to contend differently from what you say?

A. I imagine they would.

Q. Or ask him if he wants to write a letter or make any expression about it. Is that your understanding of what occurs?

A. Yes.

Q. Do you sometimes have cases where you raise those questions and where, after hearing the views of the producer, the company tells you to go ahead and consider it covered, even though you do not initially feel convinced that it is?

A. Oh, yes.

Q. Then, you sometimes have some cases, I take it, when they confirm your view that you should not consider it covered; is that correct?

A. Well, you know, a whole lot of that is a possible misunderstanding of the way the policy was written. It is more essentially an underwriting proposition than it is a claim proposition. The Claim Department is only responsible for taking care of contracts as in force, and if anybody else wants to change the contract or can change [fol. 997] the contract, that is their business, not ours.

Q. You mean, sometimes when a coverage question arises, there has been a misunderstanding on the part of the assured or the agent or the company and there are claims made that the policy ought to have written in a different way?

A. Yes.

Q. What detriment, if any, is there to the interests of the assured where questions of coverage are raised because the producer is a non-resident of Virginia, rather than a resident?

A. None, so far as I am concerned.

Q. Do you know of any detriment?

A. No, I do not know of any.

Q. I would like you to state the instances when you rely upon the producing agent or any other agent to investigate those accidents or assist you in the investigation or in negotiating a settlement?

A. Agents may have little property damage cases happening around in the territory and the insured comes in and tells him about it and he sends in a report with an estimate or a bill for $5 for a fender, or something like that, and will just send out a proof to the claimant and the repairman and settle it, but other than that there is none.

Q. Are those occasions limited to cases when the amount involved is trivial or de minimus?

A. They are limited to cases under $25 and usually under $10.

Q. Are you in any way accountable to the agent for your actions?

[fol. 998] A. I have no authority over the agent and he has no authority over me.

Q. How do you determine the value of a third-party claim or claim to an assured in determining the amount to be paid?

A. By investigation by my employees.

Q. Does your long experience assist you in that, or is experience necessary to evaluate those claims?

A. Mr. Christian, this claim business is a highly specialized business, and we do not figure that a man earns his salary until he has been with us at least two years, devoting his time exclusively to claim work. There isn't any question but what experience is the most valuable thing that a man can have in claim work.

Q. There was some testimony given by Mr. Tabb the other day, from which I received the impression from him that it was not an unusual thing for him to influence the amount of your settlement, and also that your department confers with him on claims on policies originating from his office before you make settlement, and at one point he said that, "When we have information upon which we wish the claim not paid, we advise them and they confer with us before they make a payment." I would like you to comment on this testimony by Mr. Tabb.

A. Mr. Tabb has represented the Travelers in Richmond for forty years. He was General Agent for the company for a great many years before they had a Branch Office.

He considers himself the Travelers Insurance Company in this territory, or top man, and he is a very loyal, cooperative gentleman, and I have no doubt but what he entertains [fol. 999] the idea that he has a great deal more influence than he actually has. It is a rare occasion that Mr. Tabb ever comes into a claim settlement before it is settled, and then only where there is some misunderstanding of some sort, or he might, once in a while—I don't remember when he ever did—and he certainly would be expected to transmit to me any information that he got which might be helpful to us, but so far as deciding claim merits and placing valuations on the case, Mr. Tabb is an excellent agent, but I do not think he would know how to evaluate a claim.

Q. What is your procedure when he asks you to do what you would otherwise not have done or to not do what you otherwise would have done?

A. Well, I try to point out to him that, of necessity, he has not the complete picture and, also of necessity, his experience is in selling insurance and not in evaluating claims, and at the end of the conversation we usually get together on my ideas, in fact, we always get together on my ideas.

Q. In those cases of which he speaks where he does not want a claim paid, why is it that he does not want the claim paid?

A. Well, there are a whole lot of reasons—of course, running up an insured's experience, or usually it is because the insured has got a claim, or thinks he has a claim, against a third-party in an automobile collision and the insured thinks that if he makes a payment on the property damage claims, that he would not have a right to assert his action for damage to his car, and in those cases we have to explain to Mr. Tabb and to the insured just what the circumstances [fol. 1000] are and what the probable outcome will be if we do not make an adjustment. Of course, as a general proposition, we don't want to make an adjustment if it is a fifty-fifty proposition or if the insured is not liable, but if the insured is liable, we point out to him that it is to his advantage to go on and make settlement for him because, if we have to make an additional payment, it is going to run up his experience. On property damage cases where the amount involved can be pretty definitely settled, if, after all our conferences and arguments pro and con, we can't agree, then I say, "Well, anybody can win or lose a law suit. There is always a possibility in them. Go

ahead; we will go along with you," but if there is a personal injury involved, where the amounts cannot be definitely fixed and made to remain stationary, we stick by them until we get them to agree that they had better let our experience determine the issue and go ahead and make a settlement of it, because that is for the benefit of the insured, as well as ourselves.

Q. Even though he doesn't know it?

A. Even though he doesn't know it. In fact, in the majority of those cases, he has only a part of the picture. He has simply what is told him, and our investigation takes in the whole picture.

Q. I mean, ordinarily, if you want to pay a claim against the assured, and the assured thinks he has the claim, and not the other party to the accident, it develops, before you get through, that he doesn't know the whole story; is that right?

A. Yes.

[fol. 1001] Q. In the cases we are speaking of now, the non-resident producers make requests not to pay, the same as resident producers do?

A. I do not differentiate between the two, Mr. Christian, and we get very few of those cases and I just could not say 100 percent whether we do or whether we do not.

Q. Well, do you sometimes get those requests from non-resident producers, as well as resident ones?

A. Yes. Of course, we write so much less in proportion of the business out of the State than we do in the State, but we have gotten them.

Q. When you settle one of these third-party claims amicably, or it has gone to final judgment, my understanding is that you make a report?

A. Yes, there is a form that we complete to be signed by the Chief Adjuster at the Home Office for transmittal to the assured, giving a summary of the settlement, and a copy of that form is sent to the producing agent or the Branch Office.

Q. When you send that to Mr. Critchfield and he finds it is in proper form to send out of the office, he sends it on to the assured?

A. I presume he does, but I never saw him mail one out.

Q. When you fill out this form, do you address it to the assured?

A. Yes.

Q. How many claims are handled per year in your office, Mr. Davison?

[fol. 1002] A. There were 9,600 last year and 10,007 the year before, in round figures.

Q. In how many cases would you say that you get this assistance from the producing agent in gaining the cooperation of the assured?

A. I would say, certainly, not to exceed six times, and probably three or four.

Q. In how many cases would you say that the producing agent influences the settlement of the claim?

A. Never, so far as I am concerned.

Q. In how — cases is the amount paid to the assured or the third-party claim reducible because of an agent's influence?

A. Not at all.

Q. Are you speaking of your whole experience, or just a particular year?

A. The whole experience.

Q. In what percentage of the Workmen's Compensation cases is a payment made to a nurse or doctor or hospital or the injured person or somebody else?

A. Oh, 95 or 96 percent.

Q. In the automobile cases, in what percentage of the cases would a payment to somebody in some amount be made?

A. Probably 70.

Q. And property damage cases?

A. I think it is 52, in that neighborhood.

Q. The other cases are claims of an assured, and I presume that unless because of fraud or non-coverage, in these [fol. 1003] cases there would be an obvious payment of 100 percent, wouldn't there?

A. Yes.

Q. There has been testimony here about the fire insurance business, to which I have objected as immaterial, but the Court has not yet ruled on it, so I am compelled to proceed without knowing whether it is going to be considered material or not, so I ask you, in adjusting fire risks where the business was produced outside of Virginia and covering in Virginia and there has been a local agent associated with the producer and shared in the commissions, do you ever have any contacts with this local agent who shares in the

commission, or are your contacts exclusively with the producing agent, if you have any contacts with any agent?

A. With the producing agent.

Q. As a matter of fact, do you often have contacts with the producing agent in adjusting fire risks?

A. Only to get the daily report, that is, the record of insurance.

Q. What is the Richmond Safety Council?

A. That is a community fund project organized for the promotion of safety of all sorts and descriptions in the City of Richmond.

Q. Mr. Tabb used the possessive of that in speaking of it the other day. Is he a member of the Board of Directors of it?

A. No.

Q. Are you a member of the Board of Directors?

A. Yes. Mr. Tabb probably has been in years gone by. I [fol. 1004] know that Mr. Brockenbrough has been; I am not sure, but I understand Mr. Tabb has been.

Q. Do the casualty insurance companies or the insurance agents have any control over that organization or any responsibility for it, or do they deserve any special credit for its existence, more than the lawyers of Richmond or anybody else contributing to the Community Fund?

A. They might have assisted in organizing it originally. I have been on the Board of Directors over two years; I think I have been there three or four years, and they have no control over it. Now, of course, they cooperate with it and they make a contribution once in a "blue moon," but very seldom. It is practically altogether dependent on the funds from the Community Fund. They are not allowed to solicit to any great extent outside of the Community Fund.

Q. When Mr. Tabb speaks possessively about this Council and says that "We give rewards to drivers," do you connect that up in any way with insurance companies or insurance agents as giving those rewards?

A. No, not now. As a matter of fact, I heard that, several years ago, Mr. Tabb got the Travelers to send down a silver cup one year, but they don't do that any more. There are no money awards given any more. They have badges and buttons and bronze figures that they give out.

Q. I believe they also interest children and send out literature to employees of labor, such as posters urging safety considerations, and the like, don't they?

[fol. 1005] A. Yes.

Q. Well, do they pick out only employers of labor who have insurance, or do they select people who employ labor?

A. They don't pick out anybody particularly, except where they think that the literature will do good in safety work—home, road, street, or anywhere else—and the literature is usually furnished them by the National Council of Casualty and Surety Underwriters or by the companies, and they may get it through agents, and they print a little literature themselves, but not a great deal.

Q. Do they send this only to employers who have insurance?

A. No; they send it to insured or uninsured or anybody they think it will make an impression on.

Q. And if those people to whom they happen to send it have insurance, do they know, when they send it, whether that business was produced by Mr. Tabb or by a non-resident agent?

A. No, sir. I expect they send Travelers' literature to F. & C. policyholders, and F. & C. literature to Maryland Casualty policyholders. They don't know whom they are insured with and don't care.

Q. How does your department have an influence on loss experience and the resulting loss of life and limb and property in transactions covered by the casualty contracts of your company?

A. Well, Mr. Christian, I would say that our greatest benefit—if it is a benefit, and I hope it is—to the policyholder is our proper investigation in the valuation of claims. Now, if, in the investigation of a claim, we find some de-[fol. 1006] fective condition or some unsafe condition which, in our opinion, should be remedied, we will immediately tell the proper parties of the employer or the assured and suggest that it be remedied and we will make a report to the engineering department and they will carry through on any safety work that may be needed along that line. That is their responsibility.

Q. When you notice carelessness, especially, I suppose, recurrence of carelessness, is causing accidents, do you wait for somebody to ask you to go to the assured, or do you go, yourself, and tell him what you have noticed?

A. Oh, we automatically do it right away. We won't wait for somebody to tell us—of course not.

Q. Do you usually go to the higher-ups in there, or do you just go to the men themselves who have been guilty of the carelessness or accident?

A. Oh, no, we go to somebody in authority.

Q. You do that yourselves; you do not need Mr. Tabb to interview and talk to that man?

A. Oh, no. We talk to him before Mr. Tabb knows we have found it, and when we get back, we talk to Mr. Murphy, in the Engineering Department and if, in his opinion, it needs to be rectified, he goes out and tries to rectify it. Of course, before we get through, they may have Mr. Tabb and Mr. Murphy and maybe all three of us into the proposition. That very rarely happens.

Q. Do you ever have these assureds come to you and express concern that they have had what they consider an [fol. 1007] excessive accident frequency experience and ask you for suggestions, or ask you whether they are right in their fears that their frequency is too great?

A. Oh, yes. They will usually be the result of our impact from time to time, don't you see, to draw it to their attention, or it may be the impact of the losses that have been reported, and they will occasionally ask us to supplement Mr. Murphy's work by talking to the employees, or talking to the drivers, or sometimes talking to anybody else. They have had me go out to their house, or send their 19-year-old daughters out to my house to give them a lecture.

Q. How often do you think these talks are given because of something that some agent does? Is it a large percentage of your talks that come from that, or a small percentage?

A. Well, there are only a few talks a year, as far as that is concerned, but I would say that the great majority of cases are not from the agent. You see, we get instructions on that, sometimes from the Home Office, and sometimes from the insured, and sometimes from Mr. Murphy, and sometimes an agent.

Q. Your section of the Travelers' Branch Office and the section occupied by Mr. Murphy and his subordinates are adjoining, are they not?

A. Well, there is no door between them, actually physically joined; there is no open door. There are two doors, but the two offices do adjoin each other.

Q. You go out into an inside corridor and walk right to Mr. Murphy's office, do you not?

[fol. 1008] A. Yes.

Q. You and he see each other often during the course of the day you are both in town?

A. Oh, yes.

Q. You and he talk about loss experience and accident frequency in connection with various contracts of the company?

A. Yes, frequently.

Q. You even suggest things to him that he should do to help lower accident frequency?

A. No; I suggest to him what I think might be done to lower accident frequency, and let him do what, in his good opinion, he thinks ought to be done. That is his responsibility.

Q. He can throw your suggestion in the waste basket, or let them "come in one ear and go out the other," or he can put them into effect, can he not?

A. Absolutely. I have no more authority over Mr. Murphy than Mr. Tabb has over me.

Q. Suppose you had made recommendations designed to aid in safety, and they were not followed very well by the assured; what would you do?

A. I report to Mr. Murphy, and I may appeal a little to the Home Office, too. I don't often say, "I told you so." That doesn't happen very often, Mr. Christian.

Q. Do you know what casualty companies have salaried claim employees making their headquarters in the State of Virginia?

A. Well, I know that the Aetna, the Fidelity & Casualty, the New Amsterdam Casualty, the Globe Indemnity Com-
[fol. 1009] pany, which includes the Eagle and Royal Indemnity Companies, the Maryland Casualty Company, United States Fidelity & Casualty Company, the American Mutual Company, Liberty Mutual, Lumbermen's Mutual, State Farm Mutual, Employers Liability Assurance Corporation, Indemnity Insurance Company of North America, and its affiliates, the Bituminous Casualty Company, Columbia Casualty Company, which is combined with the Ocean Accident & Guaranty Company, and the Glenns Falls Indemnity Company, and the Travelers all have salaried employees. There may be some others. I am not a hundred per cent sure of that.

Q. You don't say these are all; you just say you know these do have?

A. I just know those. There may be some others with affiliates that I don't know. You see, we have the Travelers Indemnity, the Travelers Insurance Company, and the Charter Oak Insurance Company.

Q. And all of those companies get the benefit of your department?

A. Yes.

Q. Do the claim people here have a local claim organization?

A. Yes.

Q. What is it called?

A. The Claimmen's Association of Richmond.

Q. You have meetings, do you not?

A. Once a month.

Q. Do you have any national organization?

[fol. 1010] A. There is a National Association of Casualty and Surety Underwriters that may be the parent organization of all these local Claimmen's Associations; I don't know whether it is, or not. They helped us in organizing and sent us plans for drawing up charters, and all that sort of business, but whether or not they are a national organization and we are a subsidiary, I don't know. We formed ours and wrote our own charter and everything.

Q. Are people in positions similar to yours generally members of these local organizations?

A. Yes.

Q. Do you frequently have contact through this organization with other claim people, as well as in your claim work?

A. Yes; I have more contact with them at these Association meetings than otherwise.

Q. Do the companies without salaried claim personnel in Virginia employ independent adjusters?

A. Yes, sir.

Q. How do you regard these independent adjusters, such as the Nichols Company with offices in Virginia? Do you think it furnishes an adequate claim service to its clients?

A. I should think it would furnish a proper claim service—I trained the manager.

Q. You also trained the manager of the F. & C. Department, J. C. Kidd, did you not?

A. Yes, and the Branch Manager of the Globe Claim Department.

[fol. 1011] Q. I want you to compare the investigation and adjustment work and the safety work of the Claim Department of other companies than the Travelers to its similar work and say whether they have the same kind of personnel that you have and the objects and the aims are the same, and whether they carry out the work in the same way you try to carry yours out, or whether they have different types of personnel and different objects and proceed along different lines. I am speaking of the companies primarily that you have listed as having these people here who are members of the same Association as you are and whom you are largely acquainted with.

A. I would say that the companies whose names I have called write by far the great volume of the casualty business in the State. Now, I would also say that my business and social connections with these men have impressed me that their objectives are the same as ours, that their functions, so far as they apply to the volumes at their disposal, are the same as ours. Of course, we happen to have a bigger volume and we have more men, but the fact of the business is that all of these men are, I believe, and I am certain most of them, well trained, specialized claim men. I have been in the business a right many years and I have seen right many claim men and I think that will be generally borne out.

Q. In this case, a witness is shown to have stated that in most Workmen's Compensation cases proofs of loss are not necessary. You have filed here the accident report that an employer is required to file at the time your Claim Department starts work on such a claim. I ask you whether it is [fol. 1012] not also a fact that the injured employee must, at the time of settlement, himself sign a settlement agreement containing a statement of the details of the accident and the compensation agreement?

A. The employee has to sign an agreement outlining the accident and injury—not necessarily exactly, but a pretty good memorandum of it—and that agreement must be approved by the Industrial Commission of Virginia. The employee must also sign a final receipt when the final payment is made. The agreement starts the payment and the final receipt ends it.

Q. In what States have you done claim work aside from Virginia?

A. Maryland, Pennsylvania, New York, Connecticut,

Massachusetts, Ohio, Indiana, West Virginia, Kentucky, Tennessee, North and South Carolina.

Q. You have had, then, I take it, contact with claim men in these other States, have you not?

A. Oh, yes.

Q. Will you please state to what extent claim work for stock casualty companies is done in these other States according to the methods employed in Virginia, and to what extent the methods employed in these other States differ from the methods employed in Virginia?

A. Other than local characteristics, there is none. Of course, there are local peculiarities that are different.

Q. You mean by that, that there are different——

A. Personalities. For instance, we can be far more polite here than they can in New York.

Q. I suppose there are some localities where you perhaps [fol. 1013] put greater credibility in people than you do in other localities, aren't there?

A. Oh, yes, you can certainly do that.

Q. But the methods that are pursued are the same; is that correct?

A. Yes.

Q. Speaking of these forms that you have filed, do casualty companies generally have similar forms to those which are supposed to be filled out in the same manner and disposed of similarly?

A. Of course, they draw up their own forms, but they have such a form.

Cross-examination.

By Mr. Staples:

Q. Mr. Davison, what territory do you cover in your travels, if you do any traveling, or do you confine your duties mostly to the Richmond Office and supervising the other agents?

A. Do you mean the other claim agents?

Q. Yes, the other claim agents?

A. Well, I travel. Of course, most of the time I am in the office, but I get all over the territory every once in a while. I am the trouble man.

Q. There are a number of claims which you stated had been settled through your department. Is that inclusive of

or exclusive of the small claims that these resident agents settle, involving less than $25?

A. Inclusive of everything in the office.

[fol. 1014] In other words, you consider that a claim in your office, even though it is settled by a resident agent?

A. Oh, yes.

Q. What percentage of those claims would you estimate consists of these small claims under $25 that are settled by these resident agents?

A. I would imagine that we have not over 200 of them in a year.

Q. Do these producing agents settle the bulk of those small claims or not?

A. No.

Q. Suppose you have a small claim at Cloverdale, we will say, would your claim agent settle that, or your producing agent—say, about an eight or ten dollar claim?

A. It depends on whether the local agent could settle immediately. The only time the local agent settles a claim is where an accident is reported and the claimant and the assured are right there together. He is not supposed to investigate any case, but if the assured goes to his place and admits that it was his responsibility and the fellow has a little damage and has gone to a responsible repair man, the agent says, "Send the bill in here and I will send it to the company and they will pay it."

Q. How does it happen that these individual automobile owners who have accidents to their cars in which claims are made against them for negligence, and who have had no contact with your office, happen to send the claim direct to you, instead of getting in touch with the local agent who wrote the business for them?

[fol. 1015] A. Well, I don't know why they do that, except we have been scouting around through Virginia so many years and we have had a Claim Department here so many years.

Q. I can understand he would get in touch with the Travelers Insurance Agent, if that is the form of insurance he had, but I cannot understand how an individual automobile owner who has never had any experience to amount to anything would take it up with a stranger, instead of with the man who has had the business transaction with him in

writing the policy. That has been the experience I have had, personally and otherwise.

A. Well, the most of them have a Travelers' card, don't you see, and when the "Cop" comes when they have an accident, the first question that comes up with them—unfortunately, lots of times—is "Have you got insurance?" and if they have got insurance, "What company is it with?" The officer asks them, "Are you insured?" In fact, I think there is a question on the accident report that goes to the State Police Department, "Are you insured?" and in various and sundry ways they come in. Now, you understand, I did not say that we got the majority of our reports of automobile cases direct from the policyholder outside of Richmond. Did you understand that I said that?

Q. I thought you said you got 80 percent of them——

A. No, I said, not in Richmond, but the outside territory. I expect we get, easily, of the individual automobile policies, fully 60 or 70 percent of them through the agent.

Q. That is what I was surprised at.

A. Oh, no, we get, outside of Richmond——

[fol. 1016] Q. It seems to me that the natural thing would be for the man who has a contract of that kind to get in touch with the only man he knows, and not go looking around for a stranger?

A. That is true, but, you see, in Richmond here, the policyholder telephones Mr. Tabb's office or the Branch Office, and they are instructed to call us and give the telephone number of the man who called them to report the accident, and we immediately call the policyholder.

Q. Then, even those people get in touch with you through the agent, do they not?

A. A great many of them do, but they do not fill out that form. We go to see them and they fill out the form for us.

Q. Your Claim Department helps them fill out the form; isn't that the case?

A. The policyholder signs it.

Q. Yes, he signs it, but your agent usually sits down by him and they talk together and fill it out and then he signs it, isn't that true? Isn't that the customary way of doing it?

A. The policyholder is supposed to fill them out. I said fifty percent of them are filled out by our claim agent, but the policyholder is supposed to fill them out, and we get the form, you understand.

Q. But, outside of Richmond, you think that probably seventy percent of them are filled out by the local agent?

A. On the individual risks, yes.

Q. How many of your claim agents have authority to settle claims?

[fol. 1017] A. All of them.

Q. Do you undertake to pass on every claim settled?

A. Oh, no.

Q. What percentage of the claims settled in your office do you think you pass on individually?

A. You mean, before the settlement is made?

Q. At the time of the settlement. At the time that the agreement is reached, it has to be approved by your office, does it not?

A. Do you mean by me, personally?

Q. Yes.

A. Probably ten percent.

Q. Do you have any personal knowledge of those others that are handled by the other claim agents?

A. Yes, sir. I see, well, easily 90 percent of them before they go in to Hartford.

Q. Do you mean you see the paper itself?

A. Yes.

Q. But you do not undertake to discuss any very large percentage of those claims with your assistants, do you?

A. Right many. Mr. Staples, perhaps I can qualify that for you by telling you this: I have three assistant adjusters in the office who go through the routine on routine cases. Now, if there is any point involved in the case in which there is doubt, or if they are big cases, of course, I am always consulted, but I always look over the mail every morning if I am there and pick out such cases as I do not have a running [fol. 1018] idea on, don't you see, and then, at the end of thirty days, this summary report is filled out and sent to Hartford, and I review those 30-day reports; then at the end of 90 days, we make another summary, and any automobile liability, property damage, and public liability case on file with this summary is sent to Hartford. That 90-day report, as we call it, that is the first time Hartford sees the file. I review those, so I have a pretty fair running knowledge as they go along, don't you see. They consult me on compensation cases about medical and about hospital, inspections and estimates. In each case a reserve has to be put up at the end of thirty days, don't you see, and I

keep in constant contact with the reserve of the individual case.

Q. What percentage of the claims of your whole territory arise in the City of Richmond?

A. Well, I would only be able to estimate that on the percentage of business written in the State. I think the business written in Richmond is somewhere around 22 or 23 percent of the whole business written in the State, and probably the same proportion of claims arises on that business that arise on the other. That may not be within five percent of correct; that is just a running guess.

Q. Who comes in actual contact with the parties involved in an accident which happens in other places in the State than the City of Richmond?

A. Our claim man.

Q. Who are traveling around over the State?

A. Yes. Of course, some of them are handled by corre- [fol. 1019] spondence from our office.

Q. You don't know exactly what offices these local resident agents may perform with these men who investigate such accidents throughout the State, do you?

A. I know right much about it. I have seen right much of it.

Q. You just have a sort of idea, but——

A. No, sir, I have personal knowledge. I have been to every one of those offices, I know practically every agent we have in the territory, and I have been to their offices, and many of those agents have been with us for a number of years.

Q. But you don't see what the agent does, do you?

A. I can read the handwriting on the wall. As a matter of fact, the agent exercises a very important function. He writes the business and puts it on the book; it is his job to do that; it is our job to handle the claim.

Q. You think that if one of these agents does have anything to do with it, he leaves the handwriting on the wall to show he has been acting in it?

A. I think there is no questoin that it would be there.

Q. Would it be on the report? If the agent filled out the claim, would it appear there that the agent had done it?

A. Not necessarily. In fact, it probably would not. There is nothing on the report for the agent to fill out.

Q. Of those 9,600 claims that you had, how many would you say were fire claims?

[fol. 1020] A. About 300.

Q. 300 claims out of the whole number?

A. I may be 25 off one way or the other.

Q. And what is the major part of these other claims? What type of claims are they, generally speaking?

A. Well, I expect compensation and automobile would take three-fourths of the other, and they run about neck-and-neck.

Q. Of course, a compensation claim is what is known as a "third-party claim," as is also an automobile liability claim, isn't it?

[fol. 1021] A. Yes. You understand, I mean all kinds of automobile claims, not necessarily automobile liability. Our automobile liability claims average about 40 a month. That would be about 480 a year, that is, automobile liability reports. They did run, year before last, one and one-fifth claims per report. You understand, we get a report from an insured that may involve fourteen people hurt or three or four property damage claims and a collision claim, but I am talking about individual first reports on automobile liability.

Q. What other kind of automobile claims are there besides liability that you have reference to?

A. Automobile property damage, automobile collision, automobile fire and theft, and comprehensive—that covers everything except collision; it is fire, theft, glass, water damage, cyclone, and all that sort of stuff.

Q. Do you have many collision policies?

A. No, sir, not very many.

Q. Do you have any theft policies?

A. Right many.

Mr. Christian: Do you mean policies, or claims?

Mr. Staples: Claims, I meant.

A. (Continuing.) I don't know, Mr. Staples, I would say somewhere in the neighborhood of 50 a month.

By Mr. Staples:

Q. Of thefts of automobiles?

A. Yes. That is of various kinds of damage from theft. You understand that theft "covers a multitude of sins."

Q. Do you mean that it covers if a person steals a tire off the car?

[fol. 1022] A. Breaks a handle off the door, breaks the glass trying to get in the door, or takes the cap off the radiator.

Q. They are more or less picayune and insignificant, aren't they?

A. They amount to money.

Q. Is what you have had to say, generally speaking, with reference to the objectives and procedure, etc., relating to claims in casualty cases very greatly different from the procedure in fire loss cases?

A. Well, of course, it is an entirely different from of loss. A fire loss is a direct contract with the policyholder with an established, definite position to go on. There is not as much judgment, you might say, needed there, or investigation. There is a lot of judgment, too, but it is of a different type, you might say. On your automobile liability case, you can't adjust an automobile liability case until you write the check, and you are foolish if you do not—you just keep on investigating that thing. On your fire loss you go out and determine your loss and get rid of it.

Q. Does what you say with reference to the influence of the local agent on the claim and what he has to do apply substantially to fire loss claims as it does to the casualty claims, or not?

A. The same thing.

Q. Is there any appreciable difference in the service rendered by the local resident agent in these fire losses from those in the casualty losses?

A. From a claim viewpoint, I don't see any difference.

[fol. 1023] Q. There is no difference at all?

A. No.

Q. Then, there is no reason, from the standpoint of the claim agent, that you can think of, why there should be any difference made in the compensation of a local agent who countersigns a casualty policy from that of one who countersigns a fire policy, is there?

A. Now, of course, I don't know anything about compensation or what he earns his money on at all.

[fol. 1024] Q. There is no reason why there should be any distinction made between a local agent who countersigns a casualty policy and one who countersigns a fire policy?

A. So far as I am concerned, there isn't any difference. I have no control over the agent. That is his business.

Q. I believe you referred to an instance that happened in which a policyholder, say, of an automobile liability policy does not desire a claim settled for some reason, such as that he thinks he has a claim against the man with whom he had a collision, and you have a little difficulty with the assured or his representative, and then you get in touch and confer with the producing agent. I believe you mentioned cases of that kind.

A. Oh, yes, that happens occasionally; very rarely, but occasionally.

Q. Then you stated, I believe, that you also got in touch with the non-resident producer in similar cases?

A. Yes.

Q. Then there are other cases in which you sometimes, for other reasons, fail to get cooperation from the assured in your efforts to settle the case and in which you call in the local agent; I believe that is also true, is it not?

A. Mr. Staples, if you combined the two of them and made it on the basis of any misunderstanding with your policyholders, you would probably have half a dozen of them a year. In those cases we contact the agent of record and get the cooperation of the agent of record, regardless of where he is.

Q. You would have a much easier time, or your claim [fol. 1025] agent who travels over the State would have a very much easier time talking to a local producer and getting him in personal contact with the assured or with the assured's representative at the local plant than he would in trying to contact a non-resident assured through the mails, or through some Branch Office employee, or some non-resident claim man, and having the matter passed through two or three hands? Wouldn't you say it would be a little more difficult to get cooperation in that way than it would be by direct contact by word of mouth through the local agent?

A. No, I would say it would be better to get it through the Home Office of the concern, because the local man would only have so much authority, don't you see, and it would have to go to the Home Office.

Q. So, you think it is a good policy to go over the head of the local man who represents a plant in Virginia and appeal direct to the Home Office and just "short circuit" him, so to speak, and ignore him? You think that is a good policy, do you?

A. No, I would not *to* say to go over his head. I would say this, that we work with the local man, and if the local man does not understand the picture or the situation, then it is necessary to get your man straightened out, and the Home Office is the only one to straighten him out.

Q. Then, you think it would be better to bring pressure or coercion on him than to cooperate with him in a local way and get the picture from a personal standpoint?

[fol. 1026] A. I don't believe in bulldozing or coercion under any circumstances, but I think when there is a lack of understanding, there is one place to get that understanding, and that is from the boss.

Q. If necessary, I think that is correct, but you don't think it is best to go to the boss if you have some way of settling it with the local man yourself, do you?

A. I think if it is possible to bring the local man around, I can bring him around.

Q. Then, why do you call on the local agent if you can do it yourself?

A. I don't call on the local agent unless he is a producer.

Q. I am talking about the producer; I don't care whether you call him "producer" or "local resident agent" in cooperation with a non-resident producer.

A. Let us understand each other. You want to know why we ever take it up with the agent?

Q. No; my question is this: Would it not be more satisfactory, if you have a case in which you are unable to have a local Branch Manager, we will say, of a non-resident corporation with a Virginia branch, to give cooperation on the business, we will say, of a manufacturing of some sort, and if there was a local resident agent who had countersigned that company's policy and was in friendly contact with that manager and had built up a lot of good will from the nonpartisan and impartial standpoint of a resident insurance agent, might it not be helpful to you in getting the cooperation of this State Manager of that business, without your [fol. 1027] having to put coercion on that man by having a non-resident broker take it up with the president of the company and "put the screws" on the Virginia man from up north?

A. I don't consider it "putting the screws" on him or coercing him at all. I can only say that my experience has been, where these local representatives in the very, very few instances where it has happened, for example, not long ago,

we had a man where the policy was written through Cleveland, Ohio, and they had three men in Virginia and they had an automobile accident, and he was "hollering to high heaven" that he was going to get damages and he didn't want us to settle his case, and I wrote to the Cleveland office and said, "We can't knock any sense into this man. Maybe you can." I said, "Please see the man. Here is our file. Please write to the man." And they wrote to him and that was the end of the picture. I don't call that coercion. He made a proper explanation to him.

Q. What do you call it?

A. Making a proper explanation to him. He just did not understand it before.

Q. You think his boss can make him understand something better than you can?

A. I know he can, and I believe that if a local agent had had the same thing, he would have done the same thing I did. I don't think he would have had any more influence over him than I have.

Q. Maybe in that particular case. You can always bring out some case on almost anything where you would say that you think your method would prevail, but I am speaking [fol. 1028] of a general, friendly policy of good will to be built up in a State between the local insurance representatives in the State and the local industrial State Managers and representatives, and whether or not it would be a good policy for the State as a whole and for the industrial plant and the insurance company to have this cooperation without having to take everything to New York every time some sort of disagreement arises. I simply desired an expression of your opinion on that matter, and you seem to think they had better take it to New York, and, if that is your opinion, that is as far as you can go in the matter.

A. I would say that the misunderstandings are so few and far between that the only ones we take up would have to be taken up anyway.

[fol. 1029] T. A. Murphy, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you state your name and position and how long you have occupied that position?

A. My name is T. A. Murphy, Supervising Engineer, Travelers Insurance Company.

Q. Where are your headquarters and what is your territory?

A. Headquarters in Richmond; territory includes all of Virginia with the exception of about four counties in the northern portion; also includes approximately five counties in eastern North Carolina, two counties in Tennessee and about five counties in West Virginia. I have occupied my present position for sixteen years.

Q. What is your task, Mr. Murphy?

A. My duties are to direct the operations of seven other men in the making of inspections for the Travelers.

Q. What is the primary object of the making of those inspections?

A. The primary object is, of course, to improve the risks that we insure from the standpoint of safety, to see that they are properly classified as to the various operations conducted by the assured. That would primarily be the reason for the work.

Q. Your aim is to furnish assistance, in other words, in reducing losses of life, limb and property?

A. Yes, sir.

[fol. 1030] Q. And, in addition, you say you help see to the propriety of classifications. Is some of that latter work done in the making of the original classifications by inspections before the company goes on the risk or is it all limited to the inspection and checking of classifications already made where the company is actually on the risk?

A. In some cases we inspect the risk before the policy is issued, when it is considered as an applicant risk, but the majority of our inspections are made on risks that have already been written and we have been notified of the coverage.

Q. Do you come into contact with the assureds and their representatives frequently in the cases of risks requiring periodical inspections?

A. It is our purpose to contact the executives especially, and any of their supervisory employees that they might designate to deal with us, on every visit we make to the risk.

Q. What personnel do you have to assist you in your territory? Did you say seven men?

A. Seven beside myself.

Q. And you have some clerical assistants working under you and these men, don't you?

A. Two young ladies in Richmond and part time of one in Norfolk.

Q. Where do these seven men have their headquarters?

A. Five of them are here and one in Norfolk and one in Lynchburg.

[fol. 1031] Q. With what lines of casualty insurance does your department have to do?

A. We inspect in practically every line of casualty insurance, such as automobile fleets, public liability, compensation, elevators, plate glass, burglary, machinery. I guess that about covers the field.

Q. With what information do you first supply these employees when they come with the company?

A. A man who is new with the company, for several days and sometimes for a greater portion of two or three weeks, is given certain books, including manuals, and what we know as the Engineers' Handbook in order that he may become familiar with what might be called the mechanics of the company in the writing and handling of that line of insurance.

Q. And they are the same manuals that agents have, are they not?

A. They are the same manuals and I might explain that as far as the manuals containing the rates and things like that, we don't put so very much emphasis on that. We want him to be familiar with the make-up of the manual, but after he actually begins his work of inspections he is not expected to talk rates with an assured or with an agent either because most of his thought is going to be concentrated on the safety end of the work and getting compliance with the recommendations he submits, but this Engineers' Handbook that I refer to contains information that has been brought up to date by the company as a result of experience wherever they write business and includes in-
[fol. 1032] structions on the proper handling of the lines of insurance that we refer to. That information helps this man, for instance, if he visits a boiler risk, to know what to look for, what the company expects him to watch out for principally in the condition of the boiler and what to be careful about recommending in the way of repairs and how to handle recommendations after they have been submitted, and the importance of some recommendations over others.

Q. My understanding of this handbook, is that it is a loose-leaf book and it is from time to time being amended by revision matter which comes to take the place of old matter in it, and it is being supplemented by additional matter? Is that correct?

A. That is correct, yes.

Q. And that comes from the Home Office at Hartford, the engineering department?

A. That is right.

Q. To avoid introducing this book in evidence, at the same time to have a description of it in the record, I will ask you does it contain a section devoted to refrigerating systems and the various hazards thereof and their variation with the various kinds of refrigerating systems?

A. That is correct.

Q. For instance, there is a gas or asphyxiation hazard in connection with some refrigeration that wouldn't be present with another type, is there not?

A. That is correct.

Q. Is there a large section that deals similarly with steam turbines?

A. That is right.

[fol. 1033] Q. And another with wheels of all kinds?

A. Yes, it describes the construction of wheels and suggests certain sketches and things like that that should be made.

Q. Does it also deal with various kinds of automobile fleets and the special hazards to which the units of these varying kinds of fleets are subject and the best methods of creating accident prevention organizations and successfully carrying on accident prevention activities?

A. Yes, sir.

Q. Is there another section dealing with burglary risks and the means of lessening the losses from burglary?

A. Yes, that is right.

Q. And another with reference to plants where different kinds of chemicals are used and the hazards to persons and property from the various kinds of chemicals and their various uses and the various forms of protection against danger by the various chemicals?

A. That is right.

Q. Do others deal with road construction, excavations, caisson, cofferdams, tunneling, pile-driving, structural iron

and steel, wrecking, and their various hazards, with particular reference to the coverage of contractors?

A. That is right.

Q. Are there others dealing with quarries, glass insurance and stevedoring?

A. Yes, sir.

Q. Does this book contain instructions with regard to the making of reports and recommendations, as well as with [fol. 1034] regard to the method of procedure in the making of inspections?

A. Yes, sir.

Q. These people that you are talking about are engaged exclusively in their work about which you have been speaking, or do they sell insurance or work in the real estate business or in banks and that sort of thing at the same time they work in your engineering department?

A. No, their work is exclusively—I think I could say that—in the work of inspection. They don't do any work outside of what the Travelers requires but they don't do any actual selling of insurance.

Q. In what manner are they compensated—by salaries or commissions or how?

A. Salaries alone.

Q. You said just now that sometimes your connection with a risk started before the company went on the risk. How does this connection arise at a time before the company goes on the risk?

A. Well, an agent might contact some prospect for a certain line of insurance and if he is a branch office agent or an agent out in the field he will take the matter up with the local branch office and they will give us requests for the inspection of the risk. Sometimes a policy is issued before that request is received. Other times we get requests from our Home Office to make certain inspections.

Q. You get these requests from the Tabb agency as well as from the branch office?

A. Yes, sir.

Q. Do you get them from the Home Office or from branch offices other than the Virginia one for inspection of situa- [fol. 1035] tions in Virginia before the company goes on the risk?

A. We get them but we don't get them direct from the branch office. They have to be routed now through the Home Office.

Q. Having been requested to inspect a risk and having caused it to be inspected, what is then done?

A. Well, the first thing, of course, in most cases is—at least eighty percent of the cases—a report is written. There will be some cases where a report is not considered necessary, depending on the condition of the risk. By a report I mean a complete report describing the operations. We might make a notation on the back of a card like this, for instance, that it was inspected on such a date and no further inspection necessary, conditions satisfactory, but in the large majority of cases the report is written and submitted to the company.

Q. Supposing the request for the inspection comes from a General Agent not reporting to the Richmond branch office, on what form do you make your report and what number of copies are made of it and to whom do you give these copies?

A. The form would depend on the kind of insurance being written. An elevator would have its form and plate glass its form and boiler another form.

Q. How many copies of the report are made?

A. In the case of a General Agent like Mr. Tabb's office, we are permitted to give them two copies of any report that we might make.

Q. And is there any other copy of the report given to anybody?

A. One copy to our Home Office.

Q. Under the regulations as to what the General Agent [fol. 1036] will do with his two copies of the report, I believe one of them is for his retention or instruction, or whatever he wants to do with it. What do the regulations contemplate that he shall do with the second copy that he gets?

A. We give him two copies, one to be sent to the underwriting division at our Home Office.

Q. And your third copy that you send to the Home Office goes to the Engineering Division?

A. That is right, yes.

Q. If the request for the inspection comes from a branch office, the producer being an agent reporting to that branch office instead of a General Agent reporting to the Home Office, what do you do with the two copies that you said you gave to the General Agent where the order came from him?

A. If the order comes from the branch office agent it may be a risk known as Branch Office Underwritten or it may be

risk known as Home Office Underwritten, the difference in he two being the type of operation and the amount of premium. If it comes in the class of Branch Office Underwritten we give the branch office two copies and keep one or our own file. If conditions are satisfactory and the risk s considered insurable by our engineer, and there is no question about insurability, the branch office may retain both copies, but if, for some reason, they hesitate about writing he risk without referring to the Home Office, they have the other copy to send to the underwriting division at the Home Office. If it is a risk that comes within what is known as a Home Office Underwritten risk but the request comes from he branch office, we give the branch office two copies. In his case we send one copy to the Home Office Engineering Division and keep one copy of the report in our file.

[fol. 1037] Q. Is it a relatively small percentage or is it a relatively large percentage of the contracts covering in your territory in connection with which you are called on to make an inspection before the contract is issued?

A. Small.

Q. Is a producer outside of Virginia, who is trying to write a risk covering in Virginia, entitled to procure an inspection before the company goes on the risk just as if he resided in the territory of coverage?

A. Yes.

Q. How does that request come to you?

A. That comes to us through our Home Office.

Q. In that case you send the reports to the Home Office for their attention and transmission to the producer?

A. Yes.

Q. Where you have not inspected a risk before a contract is issued, how do you come to inspect it afterwards?

A. We are furnished with information, if it is written in a branch office, from the branch office or from the Home Office, that the risk has been written and requesting an inspection.

Q. If it is written by a general agent where do you get the information that it is written?

A. Well, in some cases we get it direct from the general agent. In other cases the agent simply writes it and the first we know of it the Home Office informs us that it has been written.

Q. Do you get the information in due course from the

[fol. 1038] Home Office, even though the local agent may have informally told you he had written it?

A. Yes, we get that.

Q. What division at the Home Office decides whether the risk is of a character requiring inspection service?

A. That is decided jointly by the Underwriting and Inspection Divisions.

Q. Am I correct that no effort is made to inspect single automobile risks? For instance, if I take a policy on the car that my family drives, would you get a card record like this covering that risk?

A. We wouldn't get a record like that. Occasionally we will look at some special risk. It might be a risk that has been reported that the assured is a person who is crippled and there is some question as to whether it should be covered or not and, if it is a- extreme case, they will ask us to interview the man and get some general information about his operating ability.

Q. But there are certain coverage contracts, as I understand, under which, according to the general practice, no inspection is thought necessary and of those you have no record unless a peculiar occasion arises when an inspection is desired?

A. That is correct.

Q. You don't make inspections habitually, for instance, as to health and accident insurance?

A. No, sir.

Q. After the original inspection and measurement, and so [fol. 1039] forth, you don't inspect plate glass lines as a rule do you?

A. No.

Q. How about residence burglary policies?

A. We don't reinspect that.

Q. Do you inspect residence burglary policies at all?

A. Occasionally we do, yes, sir.

Q. But not as a practice?

A. No, sir.

Q. What other classes of risks in connection with which do you get these records, as a matter of course?

A. We get that, as the card itself will indicate, on compensation, public liability, automobile fleet and elevators. That about covers it. They could use the card for other coverages by making some notation there but the ones I refer to are the ones we get it on.

Q. Do you get that card also on boiler risks?

A. We do get this make-up but there is different information on there. We have a card like that for boilers. If you would want one I could get that but it is the same size only everything on there refers to boilers and machinery.

Q. Where business is produced outside of the state and covers in Virginia and consists of compensation, automobile fleet, elevator, public liability and boiler and machinery risks, do you get these cards and make the inspections and make the reports on the appropriate ones of the forms which you have filed this morning as report forms, in due course?

[fol. 1040] A. Yes, sir.

Q. I believe there is a variation in the number of copies of the report which you at times send to the Home Office, depending upon the expectancy of the Home Office as to how many persons it will have to deliver copies to, is there not?

A. That is correct.

Q. About this monthly card on a particular risk—is that put in a file that has tabs for the various months and in that division of the file referring to the month in which you plan to make the next inspection of the risk? Is that the idea?

A. The card is marked for visits, for instance, in the third, sixth, ninth and twelfth month, and if we have been there in December, we ordinarily wouldn't go back there until March and the card is put under the March tab.

Q. When you get these cards do you wait for the producing agent or somebody else to ask you to make an inspection or do you go ahead and make it?

A. We make the inspection. We set up the frequency in this office.

Q. Does the frequency of your inspections, constitute an arbitrary matter or is that frequency affected by loss experience?

A. It is not always affected by loss experience. It is affected principally by the kind of an operation that is being conducted, even though the experience might be good. Might be a quarry where we would have to keep very close watch on the handling and stowing of explosives or it might be a contracting job like some that are going on around Richmond now, that you might visit daily, even though there are [fol. 1041] no accidents, to watch the progress of the work

and because it is changing from day to day, but the frequency of inspection in, I would say, at least seventy-five or eighty percent of the cases is practically set up arbitrarily and changed as conditions might require.

Q. What would there be about an accident frequency experience that would make you change the card and how would a good or bad accident frequency experience cause you to change your card?

A. If the accident frequency was high, even though the losses had not themselves been heavy, we would look upon that accident frequency as possibly gradually developing costly accidents and we would then set up a higher frequency of visits for the time being, at least, until we had made an effort to cut down the number of small accidents that were being reported, or if the frequency was good and the operations were not considered unusually hazardous, we could then and would be glad to cut down the frequency of visits.

Q. When accident frequency experience produces inspections to determine its cause and you have made an inspection and think you have determined its cause, what do you do?

A. We take the matter up with the highest possible authority and bring to their attention what we have decided is producing the accidents and; depending on what the condition is, try to persuade them to do what is necessary to bring down this frequency. The action might be very simple or it might go into the question of forming a safety organization and meeting of employees and things like that, or it may be some physical condition in the plant that would need changing.

[fol. 1042] Q. Do those recommendations ever include recommendations for changes in the type of material which is being used, such as machines or the ways in which particular tasks are being performed by the workmen or the characteristics of the workmen who are performing certain tasks?

A. Yes, sir.

Q. Do they ever involve the expenditure of any considerable sum of money?

A. Yes, sir.

Q. Having made an inspection and made a report, including recommendations, is that the end of your connection with it?

A. No, sir.

Q. What do you do after you have reported that changes should be made?

A. We follow the recommendations up and, in most cases, we try to get an understanding with the assured, at the time of the inspection, when we can expect the recommendations to be complied with, or at least, some of them, the more important ones, and if he says thirty days, and we think it is necessary, we will go back in thirty days to see what has been done.

Q. What do you do if he hasn't done what you think he should have done within what you regard as a reasonable time in the light of his promises?

A. Well, that depends on circumstances too. We may be convinced that the assured didn't have the opportunity or something may have occurred that he couldn't have done it, but if we felt he was sincere we would then set up another date for further compliance. In other cases, if we are convinced that there is no intention on the part of the assured to comply with the recommendations, we will, in some cases, [fol. 1043] recommend immediately to the Home Office cancellation of the risk. In other cases we would take the matter up with the agent who has written the business with the idea of calling it to his attention so that the risk might be salvaged, if possible, with his influence with the assured.

Q. Suppose a case like this, where you have done the best you could to get your recommendations complied with and you come to the conclusion that the local representatives of the assured are not giving you proper cooperation and you decide you will see what the producing agent can do to help you and you find that the risk was produced by a producing agent outside of Virginia, what do you do then?

A. We refer the whole matter to our Home Office. We don't correspond directly with the outside producing agent.

Q. And what is the procedure then?

A. The Home Office takes the matter up with the producer, or as far as I know, may take it up direct with the Home Office of the assured.

Q. In your experience do you find that you get any better results when local representatives fail to cooperate with you if there is a resident agent or do you find that you get equally as good results if the producing agent is a non-resident when you make complaints of lack of cooperation?

A. I don't recall any risks, with one exception, where a resident agent—I mean by that an agent residing where the

operations are carried on—was gotten in contact with. In other words, all of our dealings have been, on those risks written outside of the state, directly with the Home Office.

Q. After you make a complaint of lack of cooperation and you complain to the Home Office, do you usually find that you get that cooperation from the local representative of the assured?

[fol. 1044] A. Yes.

Q. What difference is there in getting that cooperation between cases produced outside of the State of Virginia and cases produced inside of the State of Virginia? Is there any difference, as far as you know?

A. Not that I know of. I might mention at that point, from our standpoint, most of these risks that we do contact that are written outside of the state are ones that have also their own inspection division and I imagine a claim division too. I have in mind a risk right here in Richmond that their safety literature and all comes out of the New York office after going over jointly by our inspection division and their inspection division. The reason I mention that is because the result of that is there is very little trouble in getting that cooperation.

Q. In the case of the big workmen's compensation risks covering in Virginia, would you say that it is the custom to have a man in the plant materially concerned as a part of his duties with safety or would you consider that it is the custom not to have such a man in these big plants?

A. It is the custom to have one.

Q. Do you find that man a good man for you to cooperate with or a bad man for you to cooperate with?

A. He is usually a very good man.

Q. Do you sometimes make reinspections at the request of the Home Office or at the request of producing agents at a time sooner than, in the absence of such a request, you would have made a reinspection?

A. Yes.

Q. Could you illustrate the instances when you do this as a result of requests by the Home Office?

[fol. 1045] A. I have in mind one that was made recently. The Rating Bureau of Virginia also makes inspections, principally, I think, for classification purposes and in the inspection of this risk they reported that another classification, which carried a higher rate than was shown, should apply there and the Home Office, through our branch office

in that particular case, requested us to make a reinspection of the risk.

Q. To change the classification?

A. To change the classification, yes, sir.

Q. In that particular case did you find out what happened to it, whether the criticism was justified or not?

A. Yes, it was. At least, it was decided that the other classification should apply.

Q. And the Bureau's position was that you were giving that man a better rate than he was entitled to?

A. Yes. Then we are requested by the agents occasionally to make a reinspection in between the regular set-ups.

Q. Can you remember enough of those cases to say how recently you have had such reinspection requests from any agent?

A. I would say we have had two or three requests at least within the last two or three months.

Q. Do you remember why they wanted you to make reinspections?

A. In one particular case there was some competition on the business and the agent wanted to be sure that he had the risk properly written and that the coverage was all that the assured could expect from any company.

Q. Tell about the other case?

A. The other case was where the agent learned there were [fol. 1046] going to be some changes in the assured's property and suggested to the assured that we be asked through him to confer with the assured regarding the advisability of the changes and whether it was the best change that probably could be made.

Q. When these requests come from the Home Office do you know whether they have resulted from producers wanting them made or whether the Home Office wanted a reinspection made of its own motion?

A. The information we get is usually very complete, telling us why the inspection is being requested. That would say whether it was something the agent had brought up or whether information was obtained from some other source by the Home Office.

Q. Is it just in cases where the agent is in the same town with the plant or is it in other cases that you get these requests, as well as those whether the agent is right at the locality of coverage?

A. It isn't necessarily where the agent is. It comes from anywhere.

Q. Do you get these requests from the branch office sometimes too?

A. Yes.

Q. How do you know that this Bureau makes these classification checks? The reason I ask you that is one of the witnesses in this case for the defendants said it did not do it.

A. I know they do it because I see their report, you might say, criticizing or calling attention to the improper classification of the risks. That is handed us to read so that we will know just why we are going there.

Q. Suppose that a fleet automobile policy is issued and that in that policy the cars are not correctly rated or de- [fol. 1047] scribed; is there any routine under which that would be discovered by your department?

A. Yes, sir, especially if the risk is a large one. By that I mean cars from fifteen up in number. In those cases we are almost invariably furnished with a list of the equipment and we check that list with the actual equipment that we find at the time of the inspection and one of the reasons for that is that it might be a month in some cases before we get to it and some equipment may have been sold and some new equipment purchased. We even go to the extent of checking motor numbers.

Q. Under your routine, do you ever inspect, without special request from the Home Office or a producing agent, fleets under fifteen units?

A. Yes, sir.

Q. What is the difference—the quickness with which you get around to it?

A. No. It might be a type of risk like a coal and wood yard that only has four or five trucks that we don't usually consider so good—the type of driver and the like of that. We want to see them as quickly as we can.

Q. You inspect all fleet risks ultimately, regardless of size, assuming they come within the classification of "fleet".

A. Not in all cases. If it is a small risk, three or four cars, we may know enough about it, if it is locally situated, to not even bother about inspecting it except if we have the compensation coverage there or boiler, or something like that, we may come in contact with it. Of course, if accidents are being reported from it, then we will check into that.

Q. Please say in what ways, if any, the work of your department is made more valuable to assureds, according to your experience, by having the producer in the locality [fol. 1048] of the coverage rather than a man not in the locality of the coverage?

A. Well, if it is a risk locally written, the agent on the risk can be of some assistance to us but if it is a risk written outside of the state, then we feel and, in fact, I think our experience has proven that we get very complete cooperation from the agent or broker, whoever it may be, outside of the state, where the headquarters of the risk are located.

Q. Am I to understand that as far as the value of your work to the assured is concerned, it doesn't make any difference whether the producing agent is a resident or non-resident of the locality as long as he has the attributes and relationship to the assured of having produced the business or am I to understand the contrary?

A. It is my opinion that regardless of where the agent is located, if he has influence enough to write the business, he has influence enough to render us the assistance we need.

Q. Under your practice does a non-resident producer get the benefit of your instructions and reports just as a resident producer gets that benefit?

A. Yes, sir.

Q. I want you to tell me now what you do along the lines of talking to assureds in your territory with respect to safety matters and talking to the drivers of their cars and the operators of their machinery, elevators, engines, and so forth, and what it is that makes you talk to these assureds and their operators and drivers.

A. If it is a new risk that, for instance, we don't know much about, we have no past experience except what we have [fol. 1049] gotten in a roundabout way, and we try to give the assured the benefit of our experience on similar risks.

Q. Suppose the Standard Oil Company has a two hundred unit fleet here in Virginia and, if you learn your company is covering it, what is the first thing you do when you start out to help that assured in respect of safety matters?

A. If the risk you refer to was written with the Travelers, they would inform us before we ever went over there who would be the man to contact. That information would be given our Home Office by the Home Office of the assured. We would contact this man, if he is in Richmond, usually

by telephone, and make an appointment that would be convenient for both and tell him what we wanted to do, that we wanted to assemble his drivers or we wanted to see as many of these trucks as could be gotten in and, of course, if there are two hundred it is hardly likely that there will be two hundred there at one time, but we want to see them all as quickly as we can, and then we go there.

Q. When you talk to him do you ordinarily just tell him things you want him to let you tell the drivers or tell him to let you see the trucks or do you have any general talk with him about what your aims and objects are?

A. Well, the probability in the case you cite there would be that we would go to this risk, the usual procedure, and contact the man personally and tell him what our procedure is in handling that type of risk and then find out when these trucks can be assembled and whether we would have to talk to these drivers at night after they were off duty or [fol. 1050] when, but that would finally be agreed upon and then we could go ahead with the inspection along that line.

Q. Do you ask that man any questions, or is that necessary, about his methods then in use?

A. No, we don't usually ask him how he is doing it because he is going to want to do it any way the way he thinks is best and we tell him the way we expect him to do it.

Q. Do you do that of your own motion or does somebody have to tell you to do that?

A. It is just a general understanding with a risk of that size that certain things are going to be done—meetings of chauffeurs and observation of their operations on the street. We will trail them.

Q. Take a plant instead of a fleet. When you go over there to see that plant as a new risk, do you go through the plant?

A. Yes, sir.

Q. Who usually goes with you?

A. In some cases it might be the president of the company. In other cases they may already have a safety organization there with some man as chairman of the safety committee and he will probably be the one, or some foreman.

Q. On some risks the Master Mechanic would be the proper one?

A. Yes. In other words, they won't take a man off a task he has got every day and put him on it. It is a man who is in more or less an executive position.

Q. Is it a frequent thing or an infrequent thing that you [fol. 1051] make these safety talks because somebody suggests to you the propriety of it or requests you to make them?

A. In most cases it is because we feel that they should be made. There are cases where we are requested to make them by the assured or the agent.

Q. Would you call those occasionally or would you call them substantial in number?

A. No, I would say occasionally.

Q. In these requests where other people are asking for them, who are the people who ask for them?

A. Sometimes it is the assured and sometimes it is the agent.

Q. When you refer to the agent, have you any particular agent in mind as the agent? What agent are you speaking of?

A. Well, Mr. Tabb's office requests them and recently we had an agent in another part of the state request them but that is very very seldom.

Q. What is the relationship of the agent who does that asking to the assured?

A. He is the agent on the risk.

Q. What do you mean by on the risk?

A. He is the man who has written the business.

Q. Is it usual for the agent to come to the safety meetings?

A. Yes. We try to get them there ourselves.

Q. How many stock companies, admitted to Virginia, do you know of beside your own which have salaried engineering personnel with headquarters in Virginia?

A. There are several here that do have men.

Q. If you can't remember them, I will ask you about some [fol. 1052] particular ones. Does the Fidelty & Casualty Company of New York have them?

A. Yes, the F. & C. has them.

Q. How about the Aetna?

A. Aetna has them and Employers have them.

Q. How about Hartford Steam Boiler?

A. Yes, they have a man here.

Q. How about the Globe?

A. The Globe have a man here.

Q. How about the American Mutual?

A. American and Liberty both have men here.

Q. American Mutual and Liberty Mutual?

A. Yes.

Q. What about the Lumbermen's? Do you happen to know about it?

A. I don't know. I know they did have a man but I don't know now. That has been a couple of years ago.

Q. You are not able, I suppose, to keep up very accurately with what they are doing, are you?

A. No, sir, I don't try to.

Q. Can you say how many more than those I have mentioned have salaried engineering personnel with headquarters in Virginia?

A. I don't know of any others.

Q. Where do the engineers of companies, which do not have salaried engineering personnel with headquarters in Virginia, come from when they come into Virginia to do engineering work for those companies?

[fol. 1053] A. I know that the Maryland did come from Baltimore and also the U. S. F. & G. About any others, I don't know.

Q. Do you know whether some of the companies employ independent engineers residing in Richmond on a fee basis?

A. Yes, sir.

Q. Do you know whether any of these companies have engineers with a territory larger than Virginia, say, involving several states?

A. I have been told by the engineer himself that he covered more than one state.

Q. Having reference to these companies with salaried engineering departments with headquarters in Virginia, can [fol. 1054] you say whether they attempt to do different work from the work that your department tries to do for your company or whether they try to do the same kind of work?

A. From my conversations with them and association at times, they are endeavoring to do the same kind of work that we do. The procedure might be a little different.

Q. Do they come from the same walks of life and from groups with the same general kind of experience as your engineers come from?

A. I can answer that by saying that I personally know of several of these men, some of whom have worked with the Travelers, and others that I have met in the course of our

work and I would say that they do come from the stratum that we do.

Q. You find their backgrounds are about the same as the backgrounds of your men?

A. Yes.

Q. Do you understand that these departments function generally as your department functions or that they function differently?

A. In answer to the question I would say that in what might be called talking shop, when they are not on the job, and even sometimes when they are on the job, I have learned that the use of the general procedure is practically the same. I get that from a man who is with our company who was formerly with another company and I get it from men who used to be with us and who are now with other companies.

Q. Have you got a taxicab risk?

A. Yes, sir.

Q. How many units are there?

A. I would say roughly forty-or forty-five.

[fol. 1055] Q. And how do you get them together?

A. We notify the assured some little while before we come that we are going to be in this town and he has actually taken all of his cabs off the street and had the meeting in his garage. That is at night.

Q. How long does it take a man to inspect a unit in a fleet if it is conveniently located and if he is going to inspect the brakes and the windshield and rear view mirrors and condition of the stop-lights and not going to do anything else?

A. I would say if conditions were favorable to do what you said, around about twelve minutes for each unit.

Q. What do you inspect for when you inspect a fleet? Do you inspect just the brakes, windshield, rear-view mirrors and stop lights, or other things as well?

A. We get information on lots of other points than that.

Q. Are you interested in the type of tire with which the units are equipped or merely as to the condition?

A. We are interested, depending on the kind of fleet. If it is a fleet, for instance, hauling heavy objects like lumber, we want to see that the heavy duty tire and not just an ordinary tire is on there like you find on a bakery truck or something like that.

Q. What about other things? Are you interested at all in the steering gears on the cars?

A. To make it clear and as brief as I can, if we get a fleet risk of any size, we are interested in quite a number of things—for instance, the type of driver, to begin with, and the kind of maintenance that this fleet gets, whether that is done by the assured himself with competent mechanics or [fol. 1056] whether he contracts it out to some local repair shop and whether these chauffeurs, to get back to them, are young fellows or whether they have gotten to an age where they can exercise some reason, lots of times whether they are married or single, what their wages are, and we are interested in the labor turnover of these chauffeurs.

Q. How about the hours of work?

A. I was going to come to that—how long a run they are supposed to travel on, whether they have any helpers with them and if they have any layovers. We have actually put clocks in these cars to see how long they did lay over, how often they stopped and where they stopped, and we are interested in (I am speaking of a fleet now of some consequence) the general conditions around there, whether the cars show a number of tires have been worn, and we try to find out whether the man has any schedule for replacing tires; whether they have actually shown considerable wear or not, if they had served a certain number of miles, we are interested in the changing of them, and the general appearance of the cars, regardless of what the brakes might do. If they show they have fenders bumped or headlights smashed and the like of that; it would give some idea that the fleet is probably not what we would want. Then, of course, we are interested in the brakes, steering gears, principally, and the lights and that about covers the physical conditions.

Q. Is there any variation in the mechanical arrangements or any variation in the condition of the mechanical arrangements by which the tractor and the trailer are joined together that you are interested in?

A. Of course, we accept equipment that is built by recognized builders of that kind of equipment as being com- [fol. 1057] petent to know what they are building and unless that particular part where they join with a kingpin shows considerable wear, we are not concerned so much about the exact design.

Q. Are you interested at all in the body construction of the units with reference to the use to which they are being put?

A. Yes, sir, very much.

Q. What are the points of safety involved there?

A. It might be a truck that is hauling lumber without the proper number or size of stanchions or uprights that they are supposed to use to keep that lumber from sliding off, or it might be a light truck that is being loaded with heavy loads and the body wouldn't be able to retain them if the truck would get out of control even temporarily, and the load would shift over like I saw one do today, and the general make-up. There isn't any one particular thing that would stand out in front of the others.

Q. Do you consider that experience, as well as mechanical knowledge, is necessary to efficiently inspect one of these fleets or do you think a fellow that is working six or eight hours a day selling insurance or practicinng law or practicing medicine could go out and make those inspections efficiently?

A. I don't think he could. I think the experience of the inspector or engineer who has had access to files showing the different kinds of accidents that have already been reported from automobile fleet risks and also information that is furnished him by his Home Office, certainly equips him to make a better inspection of the automobile fleets than a man who is engaged principally in some other line of business.

Q. Do you pay attention, when you make those inquiries about an assured's methods, as to whether he pays any bonus compensation for good safety records?

A. Yes, sir, that is found in that report that we submit, [fol. 1058] whether that condition exists there, whether safe drivers are recompensed by bonus or some other way.

Q. How long would it take you to talk with a driver and find out what you need to know about him as an individual or about the conditions under which he works in order to meet the requirements of your inspection and reporting duty?

A. In order to be fair to the driver and also to the company, I would say that anyone who contacted one of these men, with the idea of trying to get that information, couldn't very well do it in less than twenty minutes at the least because he couldn't come right out and bring up the subject bluntly with him. He would have to kind of get his confidence in a way and I am sure it wouldn't be done satisfactorily in less than twenty minutes. I don't mean by that that every driver in the fleet would have to be talked to

twenty minutes but I mean you can get the idea as to the general set-up of them by talking to a few of them.

Q. Suppose a fleet is reasonably accessible in the vicinity of Richmond so that you can get to it in a half hour or so, and it is a twenty-five-car fleet, how long would it take one of your men to do what properly should be done to inspect that fleet, leaving out the time it takes him to get there and back, or putting that in, either one you want?

A. Of course, there are different types too. I have in mind a school bus risk of thirty to sixty busses. That type of risk requires certain attention that another kind of risk wouldn't have, but taking them on the average, I don't believe any of our men could properly (I am referring now to first inspection principally) get the information that he is expected to get in less than twenty-five minutes on each unit.

[fol. 1059] Q. Is there any way you could give the Court a picture of the relative time that is necessary for a reinspection?

A. I would say that on a reinspection a man who goes there has his last report with him and he doesn't have to get all the information he got the first time. On a school bus risk, for instance, we would be interested in finding out if there has been any damage done to the bus by the children, for instance, like breaking some of the glass that somebody might have his hand cut on, or the tires have been allowed to get down to the point where they become dangerous because in lots of those school bus risks the school bus doesn't belong to the School Board, it belongs to some man who has a lease on it and they have a contract with him and if they don't watch it this man will run his tires until his tires about run off, but the average reinspection of, say, a twenty-five school bus risk doesn't compare at all with the first inspection.

Q. It takes much less time?

A. Much less, yes, sir.

Q. Is it your understanding that inspections by other engineering departments are about the same as yours in inspecting fleets or that they proceed along substantially different lines?

A. As I said sometime back, what I know about their procedure is what I learned from talking to the men at meetings of some little society they may have and I can safely say that the procedure is generally the same.

Q. Do you think any substantial value would result to your assureds from what your men happen to see on the street by accident in the way of things that they notice are wrong and which they could recommend to be corrected or is that a rare thing when that happens?

A. We have what is known as observation inspection and [fol. 1060] trailing inspection and I think that we comment on that each month to the Home Office.

Q. When you have trailing inspection or observation inspection, is the inspection just what you happen to see or do you go out that day with the idea of stationing yourself where you can see?

A. We go out to watch for that.

Q. Is that a right long job? For instance, if I am running a Greyhound bus from here to Washington and you are going to trail me up there, it will take you just as long as it would take me? It would be an engineer's whole day, wouldn't it?

A. Of course, in a case like that it is done in connection with a trip we might have planned ourselves from here to Washington or Lynchburg and then if we want to trail them we would set our schedule to suit theirs, but we can start out with some definite purpose in mind, like with a local fleet, and go to where this truck is going to leave and follow behind him for a reasonable length of time, maybe a mile or two miles around town here at certain intersections.

Q. You say you frequently do that as a part of your inspection?

A. Yes, sir.

Q. I want to ask you to speak about road contractors' compensation insurance. When do you usually first get to the site of the job?

A. We try, if possible, to get on this job in contact with the assured at least before the work starts.

Q. Does your company at its branch offices have facilities for watching for the letting of bids on big jobs and keeping up with what jobs are going to be let, and so on?

A. I couldn't answer that definitely, although I am positive they do.

[fol. 1061] Q. Do you ever have an opportunity to observe whether that is true as an inference from the fact that when you get to the site of one of these proposed jobs there is no sign there yet of the job?

A. I know of cases where we had the insurance and this contractor has bid on some new work. A notice in the paper will attract my own attention and I know it has attracted the attention of the branch office because they have immediately commented about seeing so and so has been bidding on this job or has been given the contract.

Q. Would that be a man on whom you carry blanket compensation insurance?

A. Yes.

Q. And you know pretty well you are going to get all of his compensation coverage?

A. Yes, sir.

Q. When you have paid your inspection visit to the site, does anything take place in the way of conversation between you and the contractor as to when he is going to start work and the methods he is going to employ?

A. Yes, sir.

Q. What are you interested in about his methods, what particular type of his work?

A. We might find, if he is building a road, that it is going through a section that will require considerable blasting, removing of stones or trees or things like that, or stumps, and we are going to want to know then how he will handle these explosives in the way of stowing them and if he has an experienced man who is going to do the blasting, what precautions he is going to take to prevent the public from driving into a blast about the time it is set off, and what I was going to say is covered by the experience of the man [fol. 1062] who is going to do it. He would know how he is going to handle his explosives and set off this dynamite, but in addition to that, we would want to know the type of labor he is going to use, whether it is experienced. If he is going through a section that will require right much breaking of rock after the blasting, we want to know whether he is going to use goggles on his men. There is considerable we would want to know in a job like that.

Q. Are you interested, in connection with a liability coverage on such a risk, in the traffic conditions in the vicinity of the job?

A. Yes.

Q. Grades and things of that sort?

A. Yes.

Q. What bearing would it have whether the job is on a

main highway or on a rural route from the standpoint of public liability insurance?

A. Of course, it would be a much better risk in an isolated section than it would be on No. 1 highway.

Q. Would there be any variation in the provision made for safeguarding the public dependent on that?

A. None at all.

Q. Do you undertake to safeguard the public whether the members of it are going to be few in number or large in number?

A. Public and property both.

Q. Is it your experience that most of these contractors have blanket compensation and liability coverage when they are non-residents of the state of Virginia, doing work in Virginia, or do they let out each piece of coverage separately?

A. From all the information that I get, indicated by the [fol. 1063] information that is furnished by the Home Office, they are covered by blanket coverage.

Q. Suppose I am the producing agent of some of this compensation or liability business and I never say a word to Mr. Murphy about one of these jobs; will the result of that be that Mr. Murphy won't get to the job to inspect it while it is going on?

A. No, sir.

Q. How will you get there if I don't ask you?

A. Of course, we have gotten there the first time and from that time on our schedule is set up, as I explained before, and depending on the operating conditions as to whether it is once a month or once a week, in some cases, or every two months, and the size of the job.

Q. When you go on these jobs do you just walk around and see what you want to see or do you also talk to the people on the job or what is your usual routine?

A. We will have our plans made before we go there, of course. If there have been accidents we will bring them up very soon after our getting there with the superintendent in charge of the job or, if it is something we notice, we don't necessarily contact him right away. We probably think best not to do it all the time. If it is a road job, extending probably a mile and a half in length, we like to see what is going on before we will see him, but we will see him before we leave there.

Q. How much time do you usually spend getting to one of these road jobs and doing all that you think is required, say a mile and a half road job?

A. We have traveled as much as forty or fifty miles to get to the job without making any other inspections and we will stay on the job sometimes half an hour and sometimes three hours.

[fol. 1064] Q. Having reference to inspection departments in the casualty and surety companies as they operate in states other than Virginia, and not having any reference to the way those departments operate in Virginia, I ask you do you know any men who have worked here in Virginia and gone away and worked in other states and come back?

A. For the Travelers, yes, sir.

Q. Do you know whether or not they work in the same way in states other than Virginia as they do in Virginia or whether the methods vary substantially in the different states in doing this inspection and engineering work for the company?

A. I can say that the procedure, so far as the Travelers is concerned, is identical to the smallest detail in every state or any place where they have an office.

Q. Is my understanding correct that in a metropolitan area like New York City the personnel of the engineering department of the branch office there would be much greater than it would be in a smaller area like the Richmond area?

A. Yes, sir.

Q. Would there also be areas throughout the United States where much less personnel is required in your state engineering department than in the Virginia one?

A. Yes, sir.

Q. Would it be fair to say that the personnel is adequate, in the opinion of the engineering department of the company to do the work that is to be done?

A. Yes, sir.

[fol. 1065] Cross-examination.

By Mr. Staples:

Q. Do you have the title of Manager of the Engineering Department?

A. No, sir, Supervising Engineer.

Q. Do you have control over the people in that department?

A. Yes, sir.

Q. You have spoken about the inspection work of your department prior to the issuance of policies and the work done by the resident agents in that connection. Now, these delays to the underwriting men in the Branch Manager's office which occur from inability of the Engineering Department to promptly get their inspectors on the job, would be very much alleviated, would they not, or remedied, or are they not very much remedied, by the services of local agents, where the risk originates in this State, in doing this work themselves and thus avoiding this underwriting delay on account of the inspection service not being able to do their work promptly?

A. In answer to that, Mr. Staples, I will say that there is no delay. If the risk is one that is of minor importance, the Branch Office's underwriting division has the authority to write immediately upon satisfactory answers to any inquiry they might make from the agent, so we do not necessarily go to see the risk—that is, our department—before the policy is written and issued. If it is a type or risk which is considered hazardous or extra-hazardous, then it is just a question where they are going to wait until the inspection is made, regardless of the size of the risk.

Q. I think the cases referred to by the Branch Manager were cases in which it was considered that the inspection [fol. 1066] should be made before the policy would be issued; there was some question which arose in connection with it and which it was desired to have removed by the inspection, and this delay of the Inspection Department in not being able to render the service promptly was said to occasion the holding up of the writing of these policies, and my question is, if that is true, when there was a local policy written by local resident agent, would not that agent himself usually supply the information which is called for by the Engineering Department, or at least in a large number of cases, unless there were some great technicality involved in it?

A. Well, if the case was such that a delay was occasioned in a man not getting there in the ordinary course of his moving about the territory, then the company would feel that the risk was one that they could either let somebody else write or let the assured or the agent wait until the inspection could be made, and that occurs frequently, or, I will say, several times during the course of a year and will prob-

ably average once a month, but if the risk is big enough to make it worth while for the company to write it, we will not have any unnecessary delay in getting to it. Now, I will make that probably a little clearer: If we had a request from an agent in Marion, Virginia, to cover some risk out there (the agency department had the request) and they could not issue the policy because it was the type of risk in which the policy could not be issued until the report was submitted to the Home Office, then they would confer with us and ask us when we were going to have a man out in that territory. I might say that the man has just come back from there and he would not be there again for a week or two weeks longer, and they would tell the agent. After conferring with us and after the information they have obtained from the agent is considered by the underwriters and by us, [fol. 1067] possibly it is found that it is one they could bind until the man did get there.

Q. I have reference to possible risks that come from out of the State, where there has been no inspection by the producer, and the producer is not in personal contact with the risk, and in those cases, I say, if there had been a local man who took the application for the risk, do you not think that that information would have been supplied which caused the delay in the issuance of the policy on account of the Engineering Department service not being available?

A. You mean, if the risk was one that had its headquarters in New York, say, and had a Branch Office here, and this local agent solicited and wrote the business?

Q. No. I meant the difference between locally produced business and non-resident business. In other words, if that broker had associated with him in the beginning a resident agent to help him get the policy or the application in shape, would that not have expedited the matter, instead of being subject to the delays of the Inspection Department in cases where no local agent was associated with the broker?

A. That would depend a whole lot on the ability of the agent, I would say.

Q. I am assuming, of course, that there is a competent agent.

A. Mr. Staples, I can't get into my mind that there is at any time any delay that affects the issuance of a policy in this territory, that is, the territory I am familiar with, because whenever we get a request, as we do now, for a risk that has originated outside of the State, we get that re-

quest from our Home Office. I do not recall any case where [fol. 1068] I have written them back and told them that we would be there in two weeks that there has been any complication about it. Now, the Home Office will do this: If I write them that and it is necessary that the policy be issued promptly, they will either wire me or call me up to send a man there right away, like we do right along. We had it about three weeks ago today, at a point about 150 miles from here. We have made special trips as far as Bristol. In other words, if the company feels the risk is worth while and they are interested in it, it is not going to stand back on a two day delay and probably the expenditure of fifty or seventy-five dollars, waiting for the report.

Q. But the Branch Manager said he had no authority to order you to make the inspection and he had to wait until you were ready.

A. No, I did not figure the Branch Manager in it at all. We get our orders from the Home Office on those risks written outside of the State.

Q. What service does this Branch Manager's office render to your office?

A. I suppose you are referring to locally written business now?

Q. Any kind of business.

A. The service that they might render to us would be on a risk written by them. We do not call our Branch Manager in on any risk written outside of the State unless we are told to do it by our Home Office, so, the only help he is to us at any time is that if one of his field men has written a risk somewhere in this territory here and we don't think much of it, we can't get anywhere with it, we will notify him, stating that the risk is poor, and then, unless certain things are done within a specified time, we are going to recommend cancellation.

Q. Does Mr. MacNeil's office render any service in your department?

[fol. 1069] A. I suppose you could say it would be a service. We work together on certain risks under certain conditions.

Q. In what way?

A. As I explained a while ago, they come into the picture with us, Mr. Staples, only when we find a risk that is what we classify as poor, and not necessarily one that is not al-

together good, but one that is poor and on which we are about to recommend to our Home Office cancellation. Then we do with them just like we do with Mr. Tabb's office; we give them a copy of the report that we submit, and we don't often have to tell them that we would like to have them step in, because they do that automatically. They will contact the assured, probably without even going to the agent in some cases; the field man will know the assured, but regardless of how they handle it, it doesn't make any difference to us. What we want to do is to get certain things remedied. That is about the only thing that I can say they are of any assistance to us, that is, things of any importance.

Q. That is not any assistance to you—you are really assisting them, aren't you, in keeping the business?

A. We are both working for the Travelers, and when our work has reached the point where we feel we can't go any further, you might say we "dump it in their lap"—not altogether, but we put it in their hands to see what they can do. We don't even follow them up sometimes. It is up to them then to let us know what they have done, if anything. We may go back to that risk again in thirty days and recommend cancellation without even discussing it with them again.

Q. I understood from the general testimony and custom of Branch Offices, that the Branch Manager does not contact [fol. 1070] the assured unless requested so to do or at the invitation, express or implied, of the local resident agent who produced the business. Is that your understanding, or not?

A. Well, it is my understanding, as I said, then, again, it has probably been referred to *in* the investigators known as field men who travel in certain territories assigned to them, and the contact could either be with the field man through the agent or with the field man and the assured.

Q. Do you have many contacts with the resident agent, as distinguished from the Branch Manager's office?

A. Yes, sir.

Q. Do you have much contact with Mr. Tabb and his office?

A. Yes, sir.

Q. What kind of cooperation and assistance to you get from that office in connection with matters that arise in the discharge of your duties?

A. Very good.

Q. Do you not give earnest and courteous consideration to any matters that they bring to your attention involving any risk that they have procured?

A. Yes, sir, we give them all we can.

Q. Do you consider that your office and the service that you render is always at their command, so to speak, at any time that they feel like calling on you?

A. It takes its usual routine. People call, at times, over the phone for an inspection that they would like to have made tomorrow, for some reason, and I will ask them to make up that form, just like you have seen it here, and send it up and I will get it in the morning, and just as soon as it is convenient to do it we will get to it just as soon as we can, and I might say incidentally that we do that for any agent that we have.

[fol. 1071] Q. You would give just as prompt response to a request from a local resident agent, or probably more prompt response, than you would to a request from a Branch Manager's office, would you not?

A. We get our requests from the Branch Manager. We do not recognize these requests in our Branch Office up there. If they come in and ask for an inspection this afternoon or tomorrow, we always tell them to let it be routed to them through the Branch Office.

Q. I did not mean through the agents working in the Branch Office, but that you would give as much or more attention to a request from Mr. Tabb's office as you would to a request from Mr. MacNeil's office?

A. Yes, we would.

Q. Now, you stated, I believe, that whenever one of these notification cards come to you from the Home Office that a risk has been negotiated by a New York broker, it is your custom to immediately contact the assured if he lives in Virginia, or his representative if he is a non-resident, and familiarize yourself with that risk; isn't that true?

A. Yes, sir.

Q. There has been testimony in this case that the companies recognize the ownership of these brokers and agents in the business that they produce and that the company would do nothing to interfere with their ownership. You do not see anything unethical or having a tendency to undermine the broker when you go and contact the local representative of the assured, or the local assured if he lives here,

in order to equip yourself and inform yourself so that you can render him service, do you?

A. If we have been notified that a risk has been written in New York or Chicago, with branches in Richmond, I cer- [fol. 1072] tainly do not see anything unethical in approaching that Branch Manager of that firm and making our contacts with him, no, sir.

Q. That could not be construed as an effort to try to take the business away from the broker, could it?

A. No, sir.

Q. Nor could it be construed as an effort to prevent the broker from placing that business with another company upon the expiration of the present contract, could it?

A. No, sir.

Q. Now, assuming that a local resident agent is supposed to render the service which is customary among these agents to render to their assured in a similar case negotiated by a non-resident broker, covering in Virginia, do you not believe that the local agent, in order to equip and inform himself to render the customary service which such agents do render to assureds, would have to contact the local assured or his local representatives?

A. I rather think that he would have to contact them.

Q. You testified, I believe, that from time to time you do get requests from agents, that is, local resident agents, to render inspection service in connection with contracts that they have procured for your company; is that true?

A. Yes, sir.

Q. I will ask you if it is not also true that the fact that you get these requests from time to time indicates that these agents are alert and watchful of occasions which might require inspection and that, although the number of times they find if necessary to call on you might not be so many, nevertheless, it would be indicative of the fact that they [fol. 1073] are on the job, expending a whole lot of time, probably, that does not result in the necessity for a call?

A. To begin with, those requests are by far the exception rather than the rule, and in the particular case I had in mind when that question was asked me this morning, the agent did that, I would say without any hesitation, as a matter of self interest. He did not want this assured to feel that we would neglect anything that could be done for his risk.

A. I did not have reference to that particular case. I am talking about the fact that these agents, from time to time, do call on you for service shows that they are on the job and watching out for the interests of the assured?

A. Mr. Staples, I would say this, that where we get a request from an agent to do some particular or some specific thing on a risk, we will have, in comparison to that, 25 to 50 agents who will try to keep us away from a risk and try to keep us from contacting assureds who are afraid of the inspection service. They have an idea that when an inspector comes around the assured is going to resent it and cause trouble for them whereby they may lose the risk, and in many cases we have almost had to insist on going to the risk in order to render service that we felt was necessary.

Q. The ones that do call on you are the ones I am speaking of.

A. In some cases that might be entirely true and in other cases it probably is one where the assureds themselves have made the complaint to the agent that we have not done this or have not done that, that probably some enthusiastic field man promised them we would do, so I cannot answer that question briefly by saying in some cases yes and in others no.

Q. Then, I understand you to take the position that about [fol. 1074] 25 out of 26 agents obstruct the operation of your servicing department?

A. That is inclination, yes, sir.

Q. Well, why do you think it is that the companies would adopt an agency system if they run into that sort of difficulties?

A. Well, the agency system, as I understand it, to begin with, is to get the business, and then if they get the business and it is good business, we won't have any trouble with it, but if it is bad business, we do have a right to expect them not to complain about our trying to give certain service that will improve it. To begin with, the majority of our risks, speaking of them in numbers, are good risks and that condition, of course, is not coming up every day where we have this interference with the agents, because I believe that we are capable of doing certain things on the risk, even without the agent's coming into the picture at all. I know of any number of them. I know some where the agent was afraid for us to go to the risk, that we have improved and made the risk very satisfactory.

Q. Then, you think, do you not, that an engineering service of equal ability for a mutual company which employs salaried agents and which is not particularly interested in keeping the contract in force, would be able to render much better service, in so far as servicing a risk and preventing losses is concerned, than a stock company would have?

A. Not necessarily so. There are some risks that are written by a stock company through large, influential brokers where there is no trouble at all in getting cooperation from the assured with the help of those brokers, but, at the same time, a capable engineer with a mutual company can render, as far as he is concerned, the same service as the equally competent engineer with the stock company renders. [fol. 1075] Q. So far as you are concerned, though, you think that you render all the service and that the agent, instead of rendering a service, is really an obstruction? I believe that is your conclusion, isn't it?

A. Any agent could write a good volume of business and for years not be any kind of an obstruction at all, and probably never be any obstruction, but I am citing cases of the average agent—and good agents, I mean by that—who do feel that our calling on the assureds from an inspection standpoint to try to get them to spend money, if you want to put it that way, to carry out certain recommendations, is likely to cause some ill feeling on the part of the assured and probably result in losing business, and, in addition to our selling the assured, it is up to us to convince the agent that he can handle the assured without any great amount of trouble.

Q. You differ from the other witnesses in this case who have all agreed that the agents render a very valuable service throughout the life of the contract, then, do you not?

A. The agent, Mr. Staples, can render a whole lot of service that would never come to my attention.

Q. What kind of service could he render?

A. I say he could. I don't know of any particular service. I merely mention that he can be of service probably, that I would never know anything about, because he deals with the agency department, the Manager of the agency branch, or he may deal with the counter or the underwriting division. Now, what help he is to them, I don't know, I could not say.

Q. It seems to be the general consensus of opinion among the chief men engaged in the stock casualty business that

these agents do render a lot of service and do call on their service departments. You think that the fact that they try [fol. 1076] to obstruct inspections by your department, when they encourage it in other companies' departments, is a reflection on the way your department handles those things in making their customers or clients mad, or whether it is a reflection on the agent?

A. Well, I don't think it is a reflection on us, the way it is handled. I think it is, rather, lack of information on the part of an agent when the time comes that a risk has gotten to the point where we have to do something say, drastic about it. In other words, I mentioned a while ago that the large majority of risks were good; if they were not, the companies could not stay in business, but when we do get one out in the territory where the agent has not had that experience in the past, he would not want us to remain on it and probably lose money, but he would rather have things take a natural course and probably improve themselves and avoid that chance of ill-feeling on the part of the assured.

Q. Some of these Branch Managers have stated that it is the general duty of a Branch Manager to go around and contact these agents and give them instructions and teach them how to perform their duties as an agent, and the value to their assureds of holding down their loss experience and saving them money by policy rates, and matters of that kind. Now, what do you think is the trouble with your Travelers agency—that the Branch Manager has failed to properly instruct them, or that your department creates a "rumpus" when they get around where the assureds are?

A. I don't think either condition exists. I think they properly instruct them, and I believe the agent sincerely wants to cooperate, and if he has, out of 20 risks, eight or ten which are bad, he would realize right quickly that something had to be done about it and he would come in on it, [fol. 1077] but if he has one out of, maybe, 25 or 30 that is getting a little "sour", why, he doesn't feel, maybe, that conditions are such as we represent, or thinks we are probably looking at it from the wrong viewpoint, or something like that. I don't think the agent deliberately wants to interfere, but the agent wants to be careful.

Q. You think the agent is really doing what he thinks is for the best interests of his client, don't you?

A. I think the average agent will look after himself, as well as he would his client, or about as quickly. The first

thing is, he doesn't want to lose the risk; that is the first thought in his mind. If he can do the assured a service by cooperating with us, he probably would do that, but it is a natural thing and I can understand it very well. I think, if I were an agent and was not familiar with the engineering service that can be rendered, and I had a risk of probably 500 to 800 or a thousand dollars premium, I think I, myself, would probably advise the man who is going in there to tell his assured, "You have got to spend $100 here or $200, or do something else on this risk"—I think I would be inclined, myself, to kind of get them to hold off a little bit.

Q. Do you say, or not, that this agent is trying to do what he thinks is to the best interest of the assured when he obstructs you, so to speak, as you have mentioned?

A. Well, the agent is at a disadvantage. He probably doesn't know much about the assured's business and he doesn't know much about our way of functioning; the defect might be a big hole in the floor, and he would be willing to leave that hole there, hoping nobody would fall through, if he did not disturb the assured by leaving it there, but we [fol. 1078] can't do that, we can't hope that it won't fall through; we have got to get it improved, but if we go there to get it improved and the agent feels we are going to disturb the assured, then the agent steps in and asks us to sort of "soft pedal" a little bit.

Q. May it not be, Mr. Murphy, that the reason these agents are not so cordial to your paying some of the visits is because they feel that you are making unreasonable requests of their clients and asking them to do things that they do not feel are proper to be done, or to spend a whole lot of unnecessary money?

A. I think that is true, and I think the assureds, in some cases think that.

Q. They probably do not think as highly of your inspection service as you do?

A. That is because they don't know anything about it. If we go to an elevator risk where they have certain kinds of doors that people are opening every day and falling down the shaft, and we try to get them to take the doors down and put up a door that is really safe, which means an expenditure of four or five hundred dollars, they may have had the doors there for twenty years and nobody has fallen down the shaft, and I can see where the assured and the

agent, too, might feel we were inclined to be a little too drastic and that we were looking too entirely after our company's interests, and would put some little objection forward to doing what we ask them to do; but from our standpoint, we have these accidents one after the other, where a man will open a swinging door, thinking he is going into another room, and step down an elevator shaft, so we have got to be firm in our requirements that certain improvements be made.

[fol. 1079] Q. And you are looking at the matter solely from the standpoint of the insurance company that you represent?

A. No, sir; we are looking at it from the standpoint of the insurance company and also from the humane standpoint.

Q. Does this money that you say controls and dominates the agent have any effect on you in so far as your loyalty is concerned? How about the money that you get from your company? Does that blind you to the interests of the assured, or magnify very much the interests of the company, or are you able to shed this influence of money much more readily than these agents are?

A. If I did not get paid by somebody to go around and make these inspections, I certainly would not go, that is true; I don't think there would be any question about that, but as long as somebody is paying me, I would not even hesitate to jeopardize my job if I thought a certain condition that came to my attention needed improvement.

Q. If you do your work in a conscientious way without regard to your salary, why do you impute these discreditable motives to the insurance agents?

A. Well, I know this: There has been more than one risk that I have recommended the company to get off of, and they have gotten off of it, and I was not the least bit afraid that if they did not write that business again my salary would be cut or I would be fired, so I have really never connected in any way the fact that I was getting paid with what I was going to do.

Q. I have no doubt that is true, but what I am trying to get at is, why do you impute to these agents the discreditable motive of having their whole vision blinded and their loyalty [fol. 1080] disrupted and their being disloyal to the company and the assured for a small commission?

A. Well, one very definite reason is, I have had agents tell me, "If I lose that risk, it will mean $200 to me." I

don't know what they have in mind, but they would rather keep that $200 commission, or whatever it is, than to run the chance of having the assured offended and run the chance of cancelling the policy.

Q. Suppose you were told that if you lost your job that you would lose your salary check, you don't mean you would go around and do something wrong?

A. I don't quite see the connection there.

Q. You said this agent would do something wrong if he thought he would lose the $200. You certainly would lose your salary check until you get another job, wouldn't you?

A. Yes, sir.

Q. Is that any reason why you should act improperly in the discharge of your duties?

A. No, sir. My salary check has never entered my mind.

Q. As a matter of fact, Mr. Murphy, what the agents are really doing is protecting the assureds from what they regard as unjust demands that you and your department are making or are about to make on their clients, isn't it?

A. That probably enters into it, yes, sir.

Q. And instead of being a discreditable and disloyal thing they are doing, however they may talk to you or whatever particular reason they may give to you that you credit them with, honestly what they are trying to do is to protect their assureds and their clients from a lot of unreasonable and [fol. 1081] unnecessary expense?

A. That is true, but at the same time they know we would not be coming around there and asking that these things be done if it was not for the protection of somebody, even though that improvement be to the protection of the company that carries the insurance.

Q. That is, if you thought it was necessary?

A. Yes.

Q. But they disagree with you, and the assured disagrees with you, that it is necessary. If you get a request for an inspection from the Home Office, does that always show whether the risk has been accepted or whether it is one that is pending?

[fol. 1082] A. Well, it usually indicates on the request "U. B.", that is, compensation, covered by a policy binding it, or the word "applicant".

Q. So, you know when you are inspecting, whether you are inspecting for the benefit of the underwriter or whether

you are inspecting as a matter of service for a policy already in force?

A. We usually do, yes, sir.

Q. Is your department under the same obligation to a non-resident producer and non-resident broker to render service, both before the risk is accepted and during the life of the risk if accepted, as your department is under to a Virginia resident commission agent, such as Tabb, Brockenbrough & Ragland?

A. I have never been advised of any distinction being made between them at all.

Q. And if you got a request from a non-resident broker with reference to a pending application, you would render the same service that you would to a resident commission agent, would you not?

A. Well, to begin with, we would not get them direct from any out-of-State broker. They all come to us through the Home Office.

Q. The broker would make the request to the Home Office, and the Home Office would send it to you; is that the way it is?

A. Yes, sir.

Q. Do you get requests from resident agents, or do they come from the Branch Office?

A. We get them direct from Mr. Tabb's office, yes, sir.

Q. Do you get any requests from non-resident brokers for service after a policy is in force, or does that come from the Home Office?

[fol. 1083] A. That comes through the Home Office, yes, sir.

Q. So, you don't have any contact at all with non-resident producers?

A. Have not had any, no, sir.

Q. Does a non-resident producer ever come down and talk to you about any of his clients and their risks?

A. They have done that, yes, sir.

Q. How many times has that occurred?

A. Well, I can recall at least half a dozen, I would say.

Q. During what period of time?

A. Well, for instance, when this Williamsburg Restoration was in full swing, they had men here from New York, I think, several times, and there was one other that I was trying to think of when you asked me the question, but that

about sums it all up—it would probably be about half a dozen times.

Q. It would not be over half a dozen, would it?

A. No, sir.

Q. How long have you been connected with this office?

A. Well, I have been connected with the company twenty years next May and I have had this position I hold now sixteen years.

Q. Has any New York broker ever sent his engineering service down here in connection with any risk that you were servicing?

A. Yes, sir.

Q. And when was that?

A. In one particular case, we would get contact with this [fol. 1084] man about once a year for several years, I recall.

Q. Who was it that came down? Was it an engineer?

A. Yes, he was an engineer from the broker's office.

Q. And what type of risk was it?

A. A store risk, chain stores.

Q. And what was the type of service that he was render- [fol. 1085] ing when he got here?

A. Well, he was making the inspection, just like we would, and he then conferred with us about conditions as we found them, and would make his recommendations also to his broker's office in New York.

Q. And how many buildings did that chain store have in Virginia, if you know?

A. I would say probably 30, maybe more.

Q. Is there any other broker's engineer whom you have ever known to come to Virginia?

A. I don't recall any coming to Virginia. I know there is one who does travel down to this territory, though.

Q. Is there any other time that they are called to service any risk of the Travelers, or any other company, except the one you have mentioned, and if so, please state the details in connection with the service rendered?

A. Yes, there is one other national risk that has a branch plant in Richmond, in fact, several in Virginia, and they have this broker that writes that, and he has his man down through here, too.

Q. What kind of risk is that?

A. That is a dairy risk.

Q. Is there any other broker's engineering service, except those two, that you can specify?

A. Well, I do recall one who was here on a specific job and whom we worked with for about three weeks. That has been, I guess, as much as eight years ago—in Philadelphia.

Q. What kind of risk was that?

A. That was a utility.

[fol. 1086] Q. Was that after the risk had been procured?

A. The details of that I do not recall exactly. As well as I remember, they were assembling a lot of data to present to the assured, or to the applicant, I think it was at that time, and we were instructed to help them.

Q. In other words, they were trying to get information, rather than servicing the business?

A. I think that was it. As far as I know, they may have had the business and were going to offer it to various companies after they had assembled enough information to know what it was going to cost and to know what the premium was going to be. I don't know that particular end of it at all; all I know is that we were instructed to assist them in gathering this information.

Q. Then, you would not say that this was a service being rendered to a policyholder, would you?

A. I could not say that it was, but that was the impression I got.

Q. That it was not being rendered to a policyholder?

A. It was a service being rendered, because they had the authority from this assured to make these inspections. They were surely going to give them some information after they made the inspections. Whether they were going to submit a rate or not, I don't know.

Q. The assured would probably get three or four brokers there to make an inspection, if they were trying to work out a rate for them, wouldn't they?

A. Yes. I say, from that end of it, I am not familiar at all with it. I do not have the information as to what prompted them to be making the inspection.

[fol. 1087] Q. Was it a risk then being carried by your company?

A. No, sir.

Q. Then, they certainly were not servicing a contract of the Travelers which they proposed taking up with the question of accepting the risk if they were authorized to offer it?

A. I know that the Travelers were not writing it at the time we made the inspection.

Q. Is there any other?

A. No, I don't recall any other.

Q. You spoke of the fact that in risks which have been produced outside of the State, you had no contact with the local resident agent in the servicing of those risks. Isn't it true that, certainly up to the time of the passage of this Act, it was not customary to have a local resident agent associated in such contracts, except in unusual cases?

A. Yes.

Q. Has your entire experience in the insurance business been in the engineering department of insurance companies?

A. Yes, sir.

Q. And what States have you worked in in that capacity as the head of a department?

A. Virginia.

Q. Any other State?

A. No, sir.

Q. Now, you say these brokers in New York send their business or communicate with you through the Home Office?

A. Yes, sir.

[fol. 1088] Q. Has that always been the practice ever since you have been in the engineering department, or has there ever been a different practice?

A. I don't recall, as far back as I can remember, that any broker ever dealt direct with the engineering department.

Q. Have you ever had any direct contact with brokers, yourself?

A. No, sir.

Q. Mr. Murphy, if you never have had any direct contact with brokers and all the business the brokers have to do with the company is done through the Home Office or some Branch Office outside of the State, how is it that you are so well qualified to know about how these brokers are "on the jump" and are so well informed about everything that is going on?

A. We are furnished with copies of correspondence that passes between brokers and our Home Office and also between the Home Office and brokers, keeping us posted as to what they suggest on what we do at this end.

Q. Correspondence about what?

A. Well, the condition of the risk, for instance, or it might be a public liability risk where they are putting up a new building, or contemplating doing it, and they want to cover

it for public liability; they notify the Home Office, we get a copy of that letter furnished us by the Home Office, asking us to check up on the frontage and area, and if the building has progressed far enough to give them that information, and how it might be affected by other surrounding property. In other words, the Home Office does not just tell us that this risk is to be inspected; they make us fully acquainted with everything in connection with it that our department would be interested in.

[fol. 1089] Q. If they get any information from the broker, they send it to you?

A. Yes, sir, anything that we would be interested in, I mean. It is not a question of payment of premiums, and things like that, but if it is something that affects the risk, either from the standpoint of safety of the risk or classification, we get that.

Q. That necessarily would result from cases in which the owner had communicated his request to the broker and the broker had forwarded it on to the company?

A. Yes, sir.

Q. Is there any other source of information that you know of that the broker has, other than the insurance company or his assured as to risks in other States than the one in which the broker maintains his office?

A. I can't say how they gather information.

Q. You don't know of any other source, do you?

A. No, sir.

Q. They do not have the same opportunities for acquiring information with reference to a Virginia risk that an agent living right in that community would have, do they?

A. Well, I cannot answer that, because it might be an operation that they are interested in and that they constantly keep in touch with because it is worth their while to do it. It probably means the losing or the saving and keeping of the risk, and what channels they work through, I don't know, but I do know this: In certain national risks that we have, they have their safety department (the assured has) and they are kept informed by us as to what we know is going on around here about that plant. We do not know whether any competitor is coming in, or things [fol. 1090] like that, but we keep them posted on conditions in the plant and the like of that, as well as the information going to the broker. I mean by that, we do not deal with the assured's office direct. The information that we get

goes to them, just like it goes to the broker, through our Home Office.

Q. You mean that you send information to the Home Office and you suppose the Home Office sends it to them?

A. I know they do, because I know a man from our Home Office that goes there and confers once a month with them on getting up certain literature that is being sent out to their various plants.

Q. Do you mean your Home Office man goes to the broker, or to the assured?

A. In this case he goes to the assured, together with a representative of the broker.

Q. How long has it been since you have had to call on the Home Office of one of your assureds which has a branch in Virginia in order to get cooperation from the local State Manager of the business?

A. About a week.

Q. How long prior to that time did you have occasion to do so?

A. It has been done in this particular case for the last year and a half at various intervals.

Q. Do those cases come up often?

A. Well, it depends on what changes might be made in the property that I have in mind, and the operating conditions.

Q. Do you state that you have been communicating about this same case for about a year and a half?

A. Not the same condition, but, I mean, since we were [fol. 1091] there the last time, say, when we go back again, something else has come up that we have to bring to the attention of the Home Office, because we do not deal direct with the broker or the assured.

Q. Do you get in touch with the local manager of the concern?

A. It just so happens that we will from now on, but up until now the set-up has been that all of these matters had to be taken up with our Home Office and then with the assured.

Q. You say the first thing you do is to contact this local manager?

A. Yes, we do. We make ourselves acquainted and get permission to go through his building and make the necessary inspection, but the assureds, themselves, reserve the right to say what recommendations and what conditions

will be complied with, but as to the expenditure of money up to a certain figure, we can contact him direct.

Q. Do you try to work through the local manager before you send it to the Home Office, in these cases that you have spoken of?

A. No, sir. We have instructions not to do so.

Q. Is that contrary to your general experience, or in accordance with it?

A. For risks of that kind, it is really in accordance with it.

Q. What type of risk was it?

A. That was a very well known, nationally known cigar store.

Q. Have you ever had a non-resident broker to attend one of your safety meetings of fleet risk drivers?

A. No, sir.

Q. I believe you said that it is customary for the resident agent to attend these meetings with your department when they are held, did you not?

[fol. 1092] A. We usually make a practice of inviting him down.

Q. Well, do they attend?

A. I have had them attend, but as a general rule they do not. Lots of times we would prefer that they would not.

Q. You don't want any more obstructions, do you?

A. Not in that particular sense, but these meetings have to be handled in a right sort of way. In other words, you can't do too much talking in them. These people get restless and you don't get across what you are trying to do, so, after the assured takes most of the time, we feel that is about all the talking that ought to be done.

Q. Did you not state on direct testimony that these agents do usually attend these meetings?

A. I don't think I said they usually do; I think I said we usually request them to do it.

Q. How many supervising engineers, or men who hold the same positions with reference to insurance engineering organizations in Virginia, do you know and can name?

A. Well, all companies do not have the same titles applying to the men. I know Mr. Colston.

Q. With what company?

A. He is with the Liberty Mutual. I know Mr. Freer, with the Globe; I know Mr. Hancock, with the F. & C. I don't know this new man with the Hartford, but I knew

the other man who was here; I can't call his name now, but I don't know the new man.

Q. Are there any more that you know? Do you know [fol. 1093] who is with the Employers Mutual?

A. I think it is a man named Lewis, but I don't know him.

By Mr. Christian:

Q. How about the Aetna?

A. I don't know the present one. I knew the man who was here before him.

By Mr. Staples:

Q. How about the Liberty Mutual man?

A. I know him.

Q. Who is that?

A. Mr. Colston.

Q. How many men are there in the engineering department of the Globe?

A. In Virginia the only one I know is Mr. Freer.

Q. How many do you know in the Liberty Mutual?

A. Mr. Colston.

Q. That is not much of an organization of salaried personnel that Mr. Christian asked you about, is it, if there is only one man in it?

A. Of course, while we have more men, there is a difference in the volume of business written and the kinds of business that are written.

Q. How many are in the Fidelity & Casualty Company?

A. They have a man here in Richmond, and I understand there is a man who is located in Roanoke; I do not know him, though.

Q. In some agent's office there?

A. I don't know whether he has his own office or is with an agent, but he probably doesn't have either; he probably works from his home.

Q. Works from his home?

[fol. 1094] A. Yes, sir. In other words, they don't have an office set-up. He has a territory to travel, and lots of times the company will pay for his telephone and equip him with a desk and the like of that, instead of paying for an office.

Q. How about the Aetna?

A. I know they have a man here in Richmond, but whether they have any more, I don't know.

Q. How about the Employers Liability Company?

A. They have a man here and they did have a man who handled part of this territory out of Baltimore.

Q. Is there any casualty company or casualty and surety company at all that has any organization at all comparable to the Travelers?

A. Do you mean in size and number of men?

Q. Yes.

A. None in Virginia, no, sir.

Q. These seven companies that you enumerated, I believe you stated, are the only ones that have any sort of engineering organization at all in Virginia, aren't they?

A. As far as I know, yes, sir.

Q. Most of them have only one man and some of them may or may not have one other man, according to your best knowledge and belief?

A. Well, I was told that the Ocean has a man here, but I don't know him and I can't say that they do.

Q. If these other service organizations, if you can call them organizations when they consist of one man, or one man and a helper, are, as you have described, it would be [fol. 1095] "stretching the blanket" considerably to say that their practices and procedure are the same as in your office, would it not?

A. As I understood that, it meant the way they receive their information about risks that they are to inspect and the way they handle them. I would say that it is, as I stated before, practically the same as ours. The form may be made up just a little bit differently, but I know, as I explained in talking about the man who was with the Hartford and men that used to be with us and have gone with other companies, in discussing these things, that it is practically the same. In other words, they submit the reports just as we do and the information about them like we do.

Q. You mean, they use the same general type of forms that you use?

A. Yes, sir.

Q. But as to the method of doing the work, or the efficiency of doing the work, or the variance of doing the work, you did not mean to say that it was the same as yours, did you?

A. I would say the men who had been with us would be just as efficient with some other company as they had been with us.

Q. Do you mean that would apply to all these seven companies?

A. All of them have not been with the Travelers.

Q. Whom did you have reference to when you said you thought they would be just as efficient?

A. Well, the F. & C. have a man that used to be with us.

Q. Is that the only man about whom you can make that statement?

A. The man with the Globe, Mr. Freer, used to be with the Travelers.

Q. Are there any others?

A. No, but I know the man who is with us, that used to [fol. 1096] be with the Hartford. He said his work with the Hartford was practically identical with ours, except it was more along one line of work than diversified like ours.

Q. Who is with the Hartford now?

A. A man named Gow.

Q. Where did he come from?

A. They transferred him here from somewhere else. I think he was located in Baltimore.

Q. Who is the Liberty Mutual man?

A. Mr. Colston.

Q. From what college did he graduate?

A. I don't know the college, but he is a college graduate.

Q. Now, you spoke of a certain type of inspection that your company customarily renders on certain motor vehicles, consisting of inspecting the mirror, brakes, stop light, and tires. I ask you if it requires any particular type of skill to conduct an inspection of that kind?

A. I would say not of the mirrors and the stop lights, and even the tires, but I do think that if a man is going to test the brakes he ought to have some knowledge of mechanics.

Q. How does he test the brakes?

A. He can test them by operating the car.

Q. Putting his foot on the brake and seeing how long it takes to stop the car going at a certain speed?

A. That is right, but that does not necessarily tell the story, either. I believe that a man who knows how that [fol. 1097] brake is made up can tell better how it responds than a person who simply knows there is a brake there and puts his foot on the pedal and it catches something.

Q. Do you mean that a man who knew the mechanical construction of the brake could better tell whether it was in

order, even though it stopped exactly the same as another car with a different type of brake, without examining the mechanism as a mechanic?

A. I think that man, knowing how important it was not to have too much lost motion between his brake pedal and his brake band, would recognize, if that lost motion was there, more quickly than a man who knew the car and operated it himself. And I also think that a man, in trying out the steering gear, knowing that if the radius rod came loose that his steering gear would not be any good to him, would be more likely to detect that defect than a person who simply got up there and turned the wheel a little bit.

Q. I did not ask you about the steering gear. That doesn't come in the 12-minute inspection.

A. Yes, I refer to the 12-minute inspection.

Q. Nothing can be done in twelve minutes?

A. I say that is very little time. I do not say that a complete inspection and a satisfactory inspection could be made in twelve minutes.

Q. What kind of inspection would he give of the steering gear? If he was going to run the car out and see how the brakes were operating and inspect all these other things, how much time would he have left to inspect the steering gear?

A. It would not take him three minutes to do that.

Q. What would he do to inspect the steering gear?

[fol. 1098] A. Lift up the hood to see how his connections were down there. It might have a cotter pin loose down there; all you have to do is to lift up the hood and know where to look for that radius rod connection.

Q. That is a right simple thing for a man to learn who wants to do a casual inspection of an automobile, isn't it?

A. Yes, it would not take a genius to learn that.

Q. So, if an insurance agent wants to learn a little something about it, he, naturally, would pay some attention to what he would have to do, wouldn't he?

A. Yes, he could learn it.

Q. Is there any reason why an insurance agent could not make that same inspection, if he wanted to, just as efficiently?

A. I don't believe the average man whose mind is going along a different line of thought would or could be expected to make the same inspection as a man who was concentrating his whole thought and effort on that particular thing.

Q. Is that all that these inspectors who inspect these automobiles do? Do they just make those 12-minute inspections?

A. No, I don't mean that, but their whole training is along the line of looking for those defects, and I don't think anybody would claim that a man from a drygoods store, any more than a man from an insurance office, would go out and inspect 15 or 20 trucks or buses, with the same results as a man who has nothing to do and think about but that.

Q. Well, if the man in the insurance office makes it a part of his business to do this inspection——

A. Yes, if he did that right along and kept up with the [fol. 1099] changes that are being made in the equipment, and matters like that, I think he could finally do it very efficiently.

Q. There is nothing in the type of inspection that we have just mentioned that requires any mechanical knowledge at all, is there?

A. Practically none, but what I am referring to and what I have in mind is that that is not what we consider inspection of a truck or a bus—looking at the rear mirror or the windshield, or something like that.

Q. How often do you make inspections?

A. Do you mean, in a particular risk, how often would we inspect that same risk?

Q. Yes; how often would your periodic inspections be?

A. That depends on the kind of risk it is. If it was one where a number of trucks were being used constantly during the day and every day in the week, we would look at them from three to four times a year at a minimum.

Q. I believe you stated that they might also require some information about the history of accidents that had happened to a fleet of cars, or something of that kind?

A. Yes; we would think that was very important.

Q. Is there any reason why a resident agent who was rendering that type of service to an assured could not get that information from the assured as well as you could?

A. I don't know of any reason why he could not—if the assured wanted to give it to him.

Q. That is where you get it from, isn't it?

A. In the beginning, yes, but after that we would get our [fol. 1100] experience through claims that had been reported and we would get copies of the accident reports.

Q. Suppose he had an accident in which no claim was asserted against him—it might have been the other fellow's

fault, and, still, it might have broken the equipment all to pieces?

A. We get that, too.

Q. Where do you get that?

A. From our Claim Department.

Q. Where does the Claim Department get it from?

A. From the assured.

Q. I said, no claim is made against the assured.

A. I know, but he is expected to report any accident, even if he doesn't think there is liability on him. I am not endeavoring to answer that in this way, but I think you would find that there is an understanding between the assured and the Claim Department that he will report any accident that has occurred, because the man that admitted liability might change his mind the next day or the next week or even as late as next month.

Q. That still does not alter the question I asked you, that is, if you did not get your information from the assured?

A. In some cases we do, but after our first contact, we get our information from the Claim Department.

Q. I thought you meant the company itself. The Claim Department is just as much a part of the company as you are.

A. That is what I mean. The company itself gets the information from the assured's report and we get it from the Claim Department.

Q. But your company or you, or however you get it, it [fol. 1101] comes from the assured, doesn't it?

A. From the assured, yes.

Q. There is no reason why the resident agent could not get that from the assured just as well as the company?

A. I don't see any reason why he could not.

Q. What type of service is it that you render in a fleet risk that a resident agent cannot render if he has the time and goes to the trouble to do it?

A. He can do, I guess, everything that we could do. It is a question of whether he could do it as efficiently as, not only the Travelers' Engineering Department, necessarily, but any engineering department that, as I said awhile ago, concentrates on that line of work. In other words, I do not believe that an agent will be inclined, for instance, on a school bus risk, to take his time to measure all these school buses for the seating capacity, which affects the rate; that he is going to travel over the roads these buses travel over

to determine whether there are any road crossings or sharp curves or stops, or things like that, that we do, or that he is going to take the time to talk to these drivers to bring out the conditions that we do bring out in our report about their ability, age, and the like of that; that he is going to hold meetings of the drivers of these trucks or buses; that he is going to lift up the hood and wipe the oil off the motor number to check that with the information that has been given him by somebody to see if that is really the truck that they are insuring; I don't think he is going to do that as efficiently as a man who hasn't got anything else on his mind but to go out there and do that without worrying whether he is losing some commission from his office while he is doing it.

[fol. 1102] Q. My question was not as to what you think the agent would do, but as to what he could do if he wanted to and tried to do it. I put in my question the assumption that the agent is undertaking to do it. What is there that you and your department do that he is unable to do?

A. Well, I think any man could be trained to do that same thing in the course of time. If he has certain instructions to follow——

Q. He doesn't have to tell the driver about the crooks in the road that the driver runs over every day, does he?

A. He doesn't tell him about it, no, but he tells the Home Office about it. The agent would have to tell somebody about it if he found it out. If the agent went there and found out there were some dangerous railroad crossings and some very sharp curves, I don't think the agent could give the assured or the company he represented as unbiased information about the risk as we could.

Q. Are you talking about the time before the risk is written, or afterwards?

A. Well, that frequently is before it is written, or even after it is written. It might be written and we would not get to it for two or three months after the policy was issued.

Q. What I was getting at was the service rendered to the assured, and not the service to the company.

A. Well, I stated just a moment ago that, in my opinion, an agent, or any other individual, could be, in the course of time, instructed so that he could make an inspection of a fleet risk that would be of service to the assured. But I still can't picture in my mind an agent, as I know them, going out and inspecting a lot of trucks and giving the as-

[fol. 1103] sured the same service that somebody else could give who was not concerned about anything else except the inspection of those trucks. Now, if he is going to close up his office and go into the inspection of trucks and buses, then, I say he can do it just as well as anybody else, but I will say this, if I had a fleet of trucks and I wanted them inspected for the purpose of getting some information I did not have I would not call on the insurance agent; I would call on somebody whose business it was to deal with trucks and buses day after day.

Q. I don't believe you think very highly of these insurance agents, do you?

A. Oh, yes, I do; I think they are all right in their line, but I don't think that the insurance agent is interested in being an inspector.

Q. These insurance agents have been obstructing too much the recommendations you make for their clients' spending money, haven't they, to have earned from you a very good opinion?

A. No, I haven't any feeling about that.

Q. It doesn't make you feel particularly kindly to them when they say they don't think it is necessary for their clients to spend the money to do the things you think ought to be done, does it?

A. I give them credit for having their reasons for it and their opinion about it, and I certainly don't have feeling because they do feel that way about it.

Q. Now, what type of service is there that you render in connection with a compensation risk that a resident agent is unable to render if he is willing to devote the necessary time [fol. 1104] and attention to it?

A. Well, if the agent is going to familiarize himself with the necessary guards for saws and planers and rip saws and joiners and molding machines and emery wheels, and things like that, I say again he can eventually become a good inspector. On the other hand,—and I have had agents go in plants with me, although in that case they were depending on me to gather that information—I certainly can't express the opinion that a man who is not primarily in that line can do the same service to the assured or to anyone else as a man who is doing that exclusively. He doesn't have the time to do that.

Q. What particular mechanical things should a man be trained in that would require engineering service and, gen-

erally speaking, that an insurance agent would not be able to perform efficiently?

A. I think that could be illustrated by asking any agent you might select, what is the difference between a round-head and a square-head joiner in a planing mill, whether he would know one if he saw it and, if he did see it, what he [fol. 1105] would decide to do about it.

Q. Then, you think the mechanical inspection of machinery is something that your department should be called on for, do you?

A. Yes, sir.

Q. Now, is there anything else?

A. I think the agent should know, if it happens to be a quarry risk, what kind of dynamite they are using, how they are inserting the fuses in the stick of dynamite, how they fire it, whether electrically or by the old fuse, what kind of tools they use in loading the hole, and how far the explosive should be stored from where the operations are. Now, if he is going to have all that information——

Q. Generally speaking, then, you think that an agent would not be able to make the proper inspection of a quarry risk?

A. I don't think he could do those things and be successful in his insurance agency.

Q. Are there any other types of risk of work generally pertaining to a compensation risk, except mechanical matters and blasting methods, and things of that kind, that you think an agent would not be able to do?

A. Well, it might be a compensation risk that has on its premises elevators that are unguarded from the standpoint of shaftway protection, and it might be a compensation risk on some floor where they have elevators that the public uses and where they are not equipped with interlocks.

Q. An elevator risk is different from a compensation risk, isn't it?

A. I know, but this man that he is insuring has that hazard there and the agent doesn't recognize it, I don't think he is giving that man proper service in the way of calling it to his attention. That is why I do not think the agent should be expected to be as efficient in that as some- [fol. 1106] body who is in that line of work.

Q. You think then, that in elevators he would not be as efficient as a mechanic?

A. Yes, sir.

Q: And I suppose boiler inspection is also another type in which an agent should call on your office?

A. I think so, yes, sir.

Q. But generally speaking, out of all this great mass of information which you gave in answer to Mr. Christian's questions, there is a whole lot of it that an agent can, if he is willing to take the time and the trouble, properly perform, is there not?

A. I don't question that there is some service that he coud do for the assured, no.

Q. He can do nothing like what you do?

A. I think there is a lot that he can do.

Q. Mr. Christian just asked you as to the difference in the point of view, if any, of the assured and the insurance carrier as to reduction of loss experience. Of course, it is to the interests of both that losses should be reduced, is it not?

A. That is right, yes, sir.

Q. However, there is a point where it is not profitable to the assured to spend too much money in order to prevent possible losses; is that true?

A. He may be furnished with recommendations which, if all were complied with, would cause an expenditure of [fol. 1107] money which would be greater than the immediate result in the way of savings.

Q. After all, there must be a sort of point of happy medium, so to speak?

A. Yes.

Q. And you frequently have a difference of opinion with the agent as to what that happy medium is, or between what you think it is and what he thinks it is; isn't that true?

A. That is true.

Q. A simple illustration of that might be, I believe, that if you had a fire insurance risk, of course, if the man tore the building down on which you had the risk or constructed a fireproof building, he would not have any risk of loss from fire, would he?

A. That is right.

Q. However, the cost would be so great that he could not afford to do it, generally speaking, isn't that true?

A. Yes, that is true.

LEWIS C. ADAIR, a witness previously called by the plaintiffs, recalled in rebuttal, further testified as follows:

Examined by Mr. Christian:

Q. Mr. Adair, please tell me whether you are familiar with the organization, personnel, aims and method of carrying out the same of the Engineering and Claim Departments of the Fidelity & Casualty Company as maintained in Virginia?

A. Yes, sir.

Q. I believe you testified before that you were in authority over those people in your particular company, did you not? [fol. 1108] A. General supervision but both the Engineering and Claim Departments, however, are directly responsible to those divisions in the Home Office.

Q. Are you sufficiently familiar with the organization, personnel, aims, and methods of carrying out the same, of the Engineering and Claim Departments of the other leading companies as maintained in Virginia to make a comparison between yours and theirs?

A. In a general sort of way.

Q. Will you say whether they are generally similar or generally different?

A. The same thing is true of companies generally that have a man in charge of the claims division who has under him investigators who investigate and dispose of claims under his supervision. The same thing is true engineering-wise. There is a ranking man with assistants who work under his general direction, he working under the direction of the Home Office.

Q. Do you know whether or not they try to perform the same things pretty generally?

A. As they are dealing with the same classes of business, their objects are naturally the same and the conditions would have to be generally the same.

Q. Are you sufficiently familiar with the Travelers Claim and Engineering Departments to know whether theirs are generally similar except for being larger than those of the other companies?

A. Yes.

Q. For one thing, you have heard all of the testimony today of Mr. Murphy and the testimony last night of Mr. Davison, have you not?

A. Yes, sir.

[fol. 1109] Q. And having heard that, can you point or do you believe anybody else can point to any difference between their Claim and Engineering Department as maintained in Virginia and yours?

A. None except for possibly minor variations in details of operating methods and forms.

Q. How many people with headquarters in Virginia are in your Claim Department?

A. Six.

Q. Is Mr. J. C. Kidd the head of it?

A. Yes.

Q. And he was trained in the Travelers Claim Department by Mr. Davison?

A. Yes, sir.

Q. How many people in the Engineering Department of your company with headquarters in Virginia?

A. Three.

Q. Where are they located?

A. Two in Richmond and one in Roanoke. There is a fourth man who does specialized work in Virginia who has his headquarters in North Carolina. He handles large turbines and internal combustion generating sets. He is a specialist in those lines, in addition to a graduate engineer, having served a four or five year apprenticeship with the General Electric Company.

Q. Are all of these people salaried people?

A. All salaried people.

Q. I believe it has been indicated here that the Travelers business casualty-wise in Virginia amounts to about seven [fol. 1110] hundred to eight hundred thousand dollars per year. What does yours average casualty-wise and leaving out the fidelity, forgery and surety?

A. Leaving out the bonding lines, about $375,000.

Q. You have three and one-half engineers and the Travelers has seven besides Mr. Murphy; is that right?

A. That is about right.

Q. Do your engineers have the advantage of clerical service in your office?

A. Yes.

Q. Is the engineering division used to any extent in connection with the bonding business?

A. No.

Q. Are any of your claim people located anywhere except in Richmond?

A. Roanoke and Norfolk.

Q. How many of your Virginia representatives who are licensed as resident agents write casualty insurance contracts in their own offices?

A. I would estimate about 75 percent.

Q. Please state whether it is ordinarily a part of the representations or the sales talk of producers in Virginia to prospective automobile liability assureds with fleet risks that the agent, as distinguished from the Engineering Department of the company, is going to inspect the automobile equipment throughout the length of the contracts and inspect the drivers to determine whether they are handling the equipment with proper caution and care with the idea in mind of preventing accidents?

A. No, sir.

Q. How often would you say you are in contact with resi-
[fol. 1111] dent commission agents?

A. Not less than once a day and frequently more often than that in the several States in which I operate.

Q. Am I incorrect in my impression that your prime duty is to assist those men in their work actually in the field and in contact with the assureds?

A. Yes, sir.

Q. Do you ever hear any of them claiming to an assured that he is going to conduct those inspections?

A. I have heard them say that they would assist in inspection work, yes, sir.

Q. And to what extent is that an ordinary representation or usual one?

A. It is not usual, no, sir.

Q. Is it a usual thing for the agent to represent that he is going to investigate accidents and adjust them efficiently and economically or what is usual for him to say on this subject?

A. Under present-day conditions, the tendency of agencies generally is to undertake to sell the National claim service of their companies which, in this day of automobile travel, means a great deal more than it did ten years ago. Today a man is apt to need claim service in an adjoining state or one hundred or two hundred or three hundred miles from

home as he is to need it at home. As a matter of fact, if he gets into a bad accident there he is more badly in need of service than when he is at home among friends and would know reasonably well what to do himself.

Q. Would you have an opinion as to whether it would be more advantageous for an agent to tell the assured he is going to investigate the accidents and see that the liabilities resulting therefrom are economically adjusted or [fol. 1112] that the claim organization of the company to which you refer is going to do this?

A. Not with the more substantial assureds certainly, as they would readily realize that on their claims they needed experienced and competent claim service.

Q. Do you know of your own knowledge whether or not the working time of a successful agent in the general insurance business in Virginia is sufficiently free from the pressure of other duties to enable him to have time to make efficient inspections of cars and their drivers and factories and their workers?

A. My opinion is that it is not, based upon the fact that I know of no successful agent who undertakes to do it.

Q. The Witness Boswell said the other day that there is no reason to believe that an agent representing good companies is going to have any difficulty at all about claims, either with the assureds or companies, and that no legitimate claims are denied by good companies. What do you say as to that? Do you deny its accuracy or confirm its accuracy?

A. I think that is entirely true. I don't think there are any of the better companies that have any wish or desire to do anything except to pay all claims which they properly owe.

Q. Please say, in your six states, do you come in contact with casualty agents having workmen's compensation, automobile and other business which covers at points in those states remote from their offices?

A. Yes, sir.

Q. How about business covering at points in other states than the states of their offices and residences and by which they are licensed?

[fol. 1113] A. Quite generally.

Q. Please say do they ordinarily, when they produce business with this remote coverage, divide their commissions

with agents in the localities of the coverage where a state law does not require that of them?

A. Very seldom unless there is some statutory requirement.

By Mr. Staples:

Q. I would like to ask, as a basis of objection, whether the witness is talking about fire insurance or casualty insurance or both?

A. I am speaking of casualty insurance. That is the business in which I am experienced.

By Mr. Christian:

Q. Did you ever see any evidence, except in the exceptional cases that you referred to on your examination in chief, of the assured wanting to build up local good will or in this single-shot automobile and other personal casualty business wanting to have his interests advanced by his producer giving a part of the commissions to agents in remote localities where the coverage exists in order to enable the assured to get service from those agents, of such a division being thought advisable?

A. No.

Q. Mr. Tabb indicated that he had never seen any evidence, in the conduct of a public liability business that is pretty wide-spread or workmen's compensation business covering both in Virginia and other states, that a Travelers agent needed such an association as my friend, Mr. Staples, calls it, in order to enable his assureds to receive adequate service. Having reference to your contact with similar business on behalf of Fidelity & Casualty Company of New York and its agents, do you join Mr. Tabb in that statement or [fol. 1114] do you dispute it with Mr. Tabb?

A. Our agents do not find it necessary on interstate business to associate agents in other states with them in order that their assured's business may be properly serviced.

Q. Are casualty agents, licensed by Virginia as resident agents, usually guarantors to their companies that the premiums on contracts produced by them will be paid?

A. Agents are not held for earned premiums on items which are cancelled within the normal credit period which is sixty days.

Q. Under the Insurance Department regulations agents are not permitted, under the discrimination statutes, to extend a longer credit than that, are they?

A. It is my understanding they may not do so without charging interest for any additional extension.

Q. Is it correct that in many cases when bonds are written, especially of large size, the agent has to get authority from the Home Office to write the bond and that if the Home Office specifically authorizes the particular bond to be written, the agent has no responsibility for the premium in many cases?

A. No responsibility unless or until he collects it.

Q. Having reference to compensation insurance upon a force of men employed by a contractor doing a road job, please say is it of any advantage to the assured or to the company, in your opinion, to have the producing agent go out and inspect the work during its progress from time to time?

A. I would say not.

[fol. 1115] Q. Supposing a North Carolina contractor comes to Virginia and a Virginia agent is trying to sell him his workmen's compensation contract, what is there that you know of that the agent can tell him that the agent himself is going to do after the contract is made, and during its life, as distinguished from what the engineering and claim department of the company is going to do, that constitutes service?

A. Really nothing.

Q. Would you consider that the agent going down to the Highway Department and getting the contractor's estimate checks released a few days sooner than they otherwise would be released would be service under that compensation contract?

A. Not necessarily. Cement or material salesmen who had equal entree at the Highway Department would be delighted to do the same thing.

Q. What services are there of value to an automobile fleet assured or workmen's compensation assured with coverage in Virginia, of which a Virginia resident agent is the producer, which the agent is enabled to render him only by virtue of his presence within the state of Virginia, which would not be available to that assured if he had placed that business with a Washington or Baltimore producer?

A. I would say he would get equal service under either set of circumstances.

Q. Going back to that issue I presented to you just now about the advantage of a Richmond producer over a Washington one where there is Virginia coverage, it has been testified that in order properly to service an automobile fleet or compensation risk in Virginia a non-resident producer will have to make personal visits to the state and [fol. 1116] familiarize himself with the conditions pertaining to the risk. Do you believe that is true?

A. No.

Q. Why not?

A. It isn't generally done and it not only isn't generally done by non-resident producers but on the more substantial fleets it isn't done by the local producer because the more substantial fleets nearly always operate over a considerable area and it just isn't in the cards for the producer, whether he be a non-resident or a resident, to get around to all of the several locations from which parts of that fleet operate and personally check it up when there is really nothing that he, the assured or the company gain from having that done, when it is known by all three of them that the companies' engineering organizations, whose business it is to do that, are going to do it. So that it would simply be a duplication and waste of effort for the agent to put his time into that sort of work instead of into his normal productive activities.

Q. Would you say the same thing about the workmen's compensation coverages in various parts of the state or in several states?

A. Yes.

Q. It has been testified by a witness for the defendants that in such a case, if the producer is a non-resident, the assured loses what this witness calls the contact of the agent on the risk. Please say whether you think it is a correct statement or an incorrect one.

A. I think it is an incorrect statement based on lack of full consideration for fact. The assured doesn't lose any advantage of local contact with the agent because on such a risk the real assured is not at the site of the cover in the state.

[fol. 1117] Q. This witness says that the non-resident is not available instantly when service on the risk is needed

and that at removed locations immediate company facilities are not available. What do you say to this?

A. I would say that wherever the companies provide cover they provide some sort of an arrangement to service it and that the services would be available.

Q. This witness acquiesced in the thought that it is important to the rendition of proper service for a producing agent to be what the attorney called "personally familiar with the facts and circumstances attending the risk involved." Will you kindly say whether, in your opinion, a resident producer would ordinarily have any greater opportunity than a non-resident one to become personally familiar with the facts and circumstances attending the risk? I am speaking of these interstate fleet risks and compensation risks?

A. While the non-resident producer might not have knowledge of the risk from personal contact, he would have all of the knowledge essential to handle it from the reports of inspection that would be made available to him through the engineering department of the carrying company.

Q. Would he not have the advantage of the information in the records at the principal office of the assured in the locality where he was producing the business to become personally familiar with the facts and circumstances attending the risk?

A. He would have the advantage of those, yes.

Q. Would you consider it more important to have personal familiarity with the facts and circumstances that could be developed at the insurance placing office of the assured where its insurance managers and representatives are [fol. 1118] located and its insurance records are kept, or for him to have personal familiarity with facts and circumstances with which one could become familiar ordinarily in the locality of the coverage?

A. I would say it is much more essential that he have the information available from the location at which the records of property are maintained and the insurance placed than at the site of the plant for the reason that at the site of the plant you are dealing just with the physical property in so far as the placing agent is concerned and that can entirely adequately be covered by an inspection report.

Q. Does your company make any distinction between the non-resident producer and the resident producer in respect

of the claim department reports it transmits to them and the engineering department reports and recommendations?

A. No.

Q. Do they have the same information about mounting loss experience or other dangerous conditions sought to be observed by the service departments?

A. Yes.

Q. Would you say that the principal office of an out-of-the-state assured in the locality of the non-resident producer provided adequate equipment by the authority resident there to cause local employees of the assured in the states of coverage, who have neglected to follow safety recommendations, to change their course and follow the same or would you consider that the presence of an agent in the locality of coverage is calculated to increase the likelihood of local employees of the assured following safety recommendations? [fol. 1119] A. I would say that if the local representative of the assured were not inclined to voluntarily cooperate with the company's engineering department, there would be small hope of securing that cooperation through any other means than having definite instructions sent down from his Home Office.

Q. About what is the average premium on contracts written in your office?

A. Approximately $40.

Q. What is about the average life of each contract written there?

A. Between fifteen and sixteen months.

Q. Would you say that the average Virginia resident agent would have the same average premium and length of life of contract as your office or a smaller or larger one?

A. I would say that our volume is about typical.

Q. In the course of your efforts to get agents of companies other than the Travelers Insurance Company to represent your company, does it often happen that they object on the ground that they do not want to give up the service facilities of the company they represent?

A. We very frequently run into that.

Q. Do you ever have these people express an unwillingness to give up the claim and engineering service of the company, other than the Travelers, which they are representing?

A. Where you run into the objection, it is one or both of those.

Q. Do you find you are always able to convince them that these services of your company are better than the corre-
[fol. 1120] sponding one of the company they represent?

A. By no means.

Q. How many separate contracts, on the average, would you say result from a hundred solicitations of non-customers by a soliciting agent?

A. It would ordinarily average from eight to ten percent.

Q. Suppose that agent is soliciting people who are already his customers, would he get more contracts or less?

A. He ought to do about fifty percent better.

Q. Do you have what you regard as a reasonably accurate opinion as to how much of an agent's business will, in the natural course of events, go off of his books each year, that is, the business he has at the beginning of the year?

A. We figure the turnover is about twenty percent.

Q. Are there substantial differences in the way the casualty and bond businesses are conducted among the various states and the way the personnel of the company and the agents act in the same situation or have you found them all generally in conformity throughout the six states?

A. There is very little difference. All of my territory is southern territory and a person at home with field conditions in Virginia would be at home with the conditions in any one of my six states.

Q. Do the Fidelity & Casualty Company branch offices, other than the Richmond one, operate according to the same or different plans and with the same or different personnel, having similar or different duties from those in the Richmond branch office.

A. Variation would be only in size in proportion to the volume. They all operate under the same branch office manual of instructions.

[fol. 1121] Cross-examination.

By Mr. Staples:

Q. Mr. Adair, there is nothing which is contained in your former testimony in this case which you retract, is there, or which you regard as untrue?

A. I don't believe so, sir.

Q. You think everything you said in your former testimony is correct, don't you?

A. I think so.

Q. Do you know any of the engineers of any of these other companies?

A. No sir. Where I principally come in contact with the engineering organizations of the other companies is through what my own agents tell me of the activities of those organizations.

Q. So what you are testifying to is just what somebody told you?

A. General information, yes, sir.

Q. And you don't really have any knowledge at all about what these other engineering departments do, other than what you have heard?

A. Not except as I may find out in the competition I have to meet.

Q. In talking with your own agents?

A. Yes, sir.

Q. And your own agents naturally wouldn't know much about what the inspectors of other companies do, would they?

[fol. 1122] A. They know the competition they meet and in this day and time in our business the competition is on engineering and claim service because, after all, with all of your larger companies, you have got relatively the same financial responsibility, you have almost identically the same contract forms to sell, so that the difference in what you get when you buy from one company as against another is the service that they are organized to render under their contracts which are identical with those of the other companies.

Q. Then you give to your inspection and engineering service in Virginia credit for the business built up here rather than to your own production department, do you?

[fol. 1123] A. If they don't service it properly after we put it on the books, we have thrown away money putting it there.

Q. I asked you which ones you gave credit to for the production of the business, whether you considered that due to the efficiency of your office or of the engineering office, or both?

A. I attribute it to the sales ability of the production organization and the servicing ability of the claims and engineering divisions.

Q. Like a stock salesman can sometimes sell some phony stock?

A. Yes, sir, but he can't keep it sold and business you put on your books this year and lose next year is costly business.

Q. That same thing is true of resident agents, isn't it?

A. Yes, sir.

Q. They have to service their claims and their contracts just the same as the inspectors have to service them?

A. Yes, sir, and the companies and the agents stand or fall together.

Q. You don't regard the agents that are working under you as obstructions to the operation of your company, do you?

A. No, sir.

Q. You don't agree with Mr. Murphy about that, do you, or do you agree with him?

A. There are occasions when an agent will get off on the wrong foot on the matter of some recommendation that has been made on a risk of his but those sort of things are apt to happen in any business and I wouldn't say, certainly in our organization, that they are common occurrences.

Q. As a matter of fact, the agent is probably doing what he thinks is right and thinks the inspector or engineer is [fol. 1124] trying to make his client spend more money than he ought to?

A. I dare say that is frequently true, yes, sir.

Q. So that an agent in a case of this kind thinks he is rendering service to the assured and the assured no doubt agrees with him on that point. Don't you think that is true?

A. I think that is very frequently true, although in some cases it unquestionably results from an agent's lack of grasp of what is really involved in the recommendation.

Q. But you don't believe, do you, that a resident agent could build up a successful business by continually opposing a proper improvement in the conduct of his client's business?

A. I don't believe, sir, that any successful agency regularly does that or frequently does it.

Q. In other words, an agent who did a thing of that kind when he thought he was doing wrong would be more or less cutting his own throat, wouldn't he?

A. He wouldn't last long.

E. J. SUTCLIFFE, a witness called on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you state your profession?

A. Chief Underwriter, Employers Group.

Q. Is that the Employers Liability Assurance Corporation?

[fol. 1125] A. Employers Liability Assurance Corporation, Limited, of London and also the American Employers.

Q. Where is your office?

A. At 120 to 124 William Street, New York City.

Q. What is the style of that office? Is it the New York branch office?

A. It is the New York branch office. The Home Office is in Boston.

Q. Have you at my request examined the records of that office bearing on certain lines of coverage, including a fleet automobile liability coverage for a tobacco corporation which your company carried up to the fall of 1934 and of which Marsh & McLennan was the producer and which your company then cancelled and it was taken over by Travelers Insurance Company, which has been described by the testimony in this case as covering units in Virginia, North Carolina, and elsewhere and perhaps with sixty units, or thereabouts, and ten or twelve places of principal garaging and use.

Mr. Staples: I object to going into any specific case as contrary to the agreement, as I understood it, which has been made in this case.

A. I have looked into such a risk.

Q. Please say as to the fleet automobile liability coverage whether Employers simply failed to renew an existing contract at its yearly anniversary or whether the risk was cancelled pending the expiration of the contract?

[fol. 1126] A. We renewed the policy and then cancelled it mid-term.

Q. Please say, according to your records, why did the company cancel that coverage?

A. I have two letters here. One is a letter of June 18, 1935, which is from our Home Office Production Depart-

ment, asking me to see what I could do in the way of business for this particular risk. I replied to that on June 19th and stated that we were forced to cancel the risk, due to poor experience and, for that reason, there was very little chance of securing more desirable lines.

Q. Can you say whether or not inability to service that risk or unwillingness to service it was the cause of the cancellation?

A. Our corporation is equipped to service any risks in the states and I don't believe that we, under any circumstances, would ever say that we were unable to do so or did not want to service a risk. It seems to us to be to our best interest to service any risk that we have got, whether it is running good or bad.

Q. Having examined that file, are you able to say whether or not the loss experience over the five years you carried this coverage was within the pure premium or in excess of it and, if it was in excess of it, whether it was substantially in excess of it?

A. Our loss ratio for the period of 1930 to 1934, inclusive, was 165.3 percent by taking our actual earned premiums as against the incurred losses.

Mr. Christian: I have cooperated with Mr. Staples, as he has cooperated with me, in keeping the names of assureds out of this record upon the assumption that neither com- [fol. 1127] panies nor agents would want to bring the names of particular assureds into it but we have, off the record, identified this corporation and I am glad for him to look at this file and ascertain the name of the corporation so that if there is any possible mistake in the identification of the risk he may put Mr. Tabb back on the stand and show that this is not the same risk. I also state that off the record he and I have freely stated to each other the name of this assured so he has the opportunity to show that Mr. Sutcliffe is talking about another risk than the right one if he finds from Tabb that Tabb could support such a claim.

Cross examination.

By Mr. Staples:

Q. Did your safety engineers make recommendations that they thought would bring the risk within what you would be willing to continue?

A. From our records I can't answer that because we went off this particular risk on November 1st of 1934 and the records shortly prior to that time were all destroyed, and it is just from this information here, that hasn't yet reached the point where it would be destroyed, that I am able to tell you what I have just stated.

Q. Wouldn't it be the duty of your engineering department to thoroughly study the experience in having accidents and losses of the risk you speak of and make recommendations to the assured as to what should be done to remedy the bad experience and improve its condition?

A. That is the usual practice, the way we work it now, to make the underwriters, the claims divisions and the engineers work together.

Q. Isn't it pretty obvious then, from the fact that you cancelled the risk, that your engineers were not able to [fol. 1128] convince the assured that it should take such steps as were necessary to make the risk a desirable one?

A. No, I wouldn't say that. There are situations that arise that even though the assured may be the most cooperative that you could possibly find, they would not be able to improve the risk. I don't say that holds good in many instances but that is a fact.

Q. Give me an illustration of what you mean?

A. Unfortunate happenings, where a particular employee would take it upon himself to do something that he knew was against the rules of his employer.

Q. That situation would be remedied by the assured severing his connection with the employee, would it not?

A. There are naturally many penalties that many employers inflict upon their employees for infraction of the rules. We have any number of systems that the employers set up, with our help and with their own methods.

Q. What I am driving at is this: If your engineer discovered this trouble with an undesirable employee who had not followed the rules of the employer, he naturally would call that to the attention of the employer, would he not, and he would also recommend that that man be discharged?

A. No, he would not recommend that he be discharged. That is something that insurance companies, I think are staying away from. We are not in position to go in and recommend that a man's job be taken away from him.

Q. It has the same effect if you say that the man——

A. We state the facts.

[fol. 1129] Q. Let me finish the question. I say it has the same effect as recommending the discharge if you point out the fact that the man is disobedient to the employer's orders and, therefore, is producing a heavy loss to the insurance company and also running up the loss experience rating of the assured, does it not?

A. I would say, in answer to that question, that when we submit such facts to the employer or the man who is in charge of any safety organization, he uses his best judgment about disposing of such a man but I do say this again that I don't know of any instance where our men have recommended that a man be discharged.

Q. Do you know whether your records show what was the particular difficulty with this risk or the remedy which was suggested or whether any remedy was suggested by your engineers?

A. Our loss ratio under the automobile portion was 676.5 percent. It was a premium of $8,000 and there were losses of $54,000. With the balance of the line, on an overall loss ratio, we had 165.3. The premiums were $45,000 and the losses $71,000. That is the reason that we wanted to get off the line. In answer to the second and third questions, I haven't any record of recommendations that were made to the insured to improve the risk.

Q. Or whether or not the insured refused to comply with the recommendations?

A. I haven't any knowledge of that either.

Q. Naturally your engineers must have studied the prob-
[fol. 1130] lem and made some recommendation? That would be the ordinary practice, wouldn't it?

A. I would say yes, but I haven't gone into that phase of this particular risk. You see in our office we hold records for five years and then they are destroyed. I have a file here that is all that we have and there isn't any information in there about what we recommended and what was the attitude of the assured.

Q. I am asking you about what would be the customary practice in a case of that kind? Wouldn't it be customary for your engineers to study the problem and find out what was causing all of this loss, or try to find out, and make their recommendations to the assured to remedy the difficulties and troubles which they discovered?

A. That is the procedure that is used.

Q. So that if your company cancelled the risk the probabilities are that it was because the assured declined to comply with the recommendations of your inspector or engineer, isn't it?

A. No, I wouldn't say that. I say this, as stated in this one letter that I have, that it was because of poor experience that we got off the line. We may have secured the most wonderful cooperation from the assured but still our losses persisted and, according to our records, it was purely from a loss ratio standpoint that we took the action in cancelling those policies.

Q. Isn't it true that that loss ratio would have to be due to one of two causes, either incompetent or reckless drivers or improper equipment?

A. The answer there is no also. I can see that you can have a careful driver. I will withdraw that, if I can. You [fol. 1131] can have a driver who is not careful and have poor equipment and yet you will have some pedestrian step off the road and cut you off and you are in on it. I don't say that holds true in all cases but usually you will find that is the case, that you have got poor equipment and a poor driver and that is the reason for it because if you have got that it stands to reason it will follow through with poor operation.

Q. If the driver is careful, the mere fact of an accident doesn't impose any liability on your company, does it, unless the driver is guilty of negligence?

A. I have one case here that I have only got the bare outline of. The actual claim record I don't know whether we still have or whether it is in one of the southern claim offices. From my records in this particular case, and this is the first report (it is a flash really) it says the assured's truck was parked on the side of the road and claimant ran into the rear of same. We had a fractured pelvic, laceration of the left side of the forehead, abrasions and contusions of the body and what have you? We had four claims from that one accident.

Q. That was an act of negligence, wasn't it, on the part of the driver?

A. The assured's truck was parked on the side of the road. Whether he was improperly parked or wasn't, I can't tell from these records.

Q. He must have been improperly parked.

Mr. Christian: Let him finish his answer.

A. I can't say from the records I have here. It doesn't say that he was improperly parked or that he wasn't but from the four cases that arose out of that accident we paid the total losses and expenses of $46,541.

[fol. 1132] By Mr. Staples:

Q. It is not very likely that your company would have paid out all of that money if they hadn't thought the driver was negligent, is it?

A. I don't believe they would.

Q. That is what you paid for—negligence—isn't it?

A. That is all. As I say, I haven't got the facts of this case. The accident occurred December 15, 1933, and dragged out. The last report I have is January, 1936.

Q. Was that one of this same company's trucks?

A. Yes.

Q. So that after all, there are only about two kinds of negligence that could make you liable, aren't there? One is reckless driving or parking or improper handling of the vehicle by the operator and the other is negligence in failing to maintain the equipment in proper condition? Is there any other type of negligence that you know of that would impose liability on your company?

A. I don't know offhand what other types there are. I would think we could hold it down to the blanket term of negligence on the part of our assured. Naturally, we are not going out and pay any such sums as this if we are not negligent or if our assured is not negligent.

Q. If your service man made a careful study of the situation and found the sources of the trouble, it looks like he would have been able to suggest a remedy that, if the assured had been willing to follow it, would have made you think the risk was still a good one in the future? In other words, if he had a negligent bunch of drivers and that was [fol. 1133] reported and the assured had said he would get rid of these drivers and get some more careful men and would also keep the equipment in good condition, and you could inspect them and see that, wouldn't that have changed the outlook on the risk entirely?

A. There is a usual set plan that our engineers follow in servicing not only automobile lines but any type of risk

where the human element is involved and, from general experience of our corporation and that which we learn from others, they set a plan and try to work that plan. From there on the plan is changed according to the accidents that occur. In this particular accident I do not have the details. I don't know what service our men did effect or try to effect.

Q. Isn't it also a part of the service of your company to instruct these drivers so that they won't commit these negligent acts?

A. Yes, that is the first thing that our engineers try to do is to get the assured to get his drivers together and then talk to the drivers and instruct them and see them driving, rules of the road and reporting of defects in their equipment.

Q. The fact that there were so many accidents would indicate that your service man hadn't been able to accomplish as much as he possibly might have along that line, doesn't it?

A. One bad crack that I mentioned here was the result of one accident.

Q. You wouldn't decline a risk because you had one accident, would you?

A. I might. It isn't my general practice, no, or the general practice of our corporation to do that but the condi-[fol. 1134] tions surrounding that particular accident determined our course.

Q. You say that the Travelers Insurance Company did go ahead with the risk after you declined it, isn't that true, or, at least I believe Mr. Christian stated that in his question?

A. I have a letter here that states we were trying to get our policy releases back and one of our underwriters who, at the present time, is no longer with us, stated that the risk definitely had been replaced as of November, 1934, with the Travelers Insurance Company. This letter was written because of the fact that our Home Office was following us up to find out if the cancellation actually took effect and if there was evidence of it.

Q. The Travelers had access to all of that experience history that you have, didn't they?

A. No, they didn't. They may have asked for it and may have gotten it but my files don't indicate that they did.

Q. They would require that before they would write the policy if they followed their usual practice, wouldn't they?

A. That doesn't hold true. We exchange experiences on risks. The New York office of the Travelers and our New York office are very friendly. We know all the men there and if there is anything that looks kind of "hot" to us, we will call them up and they will give us the story and yet in other parts of the country you don't find that to be [fol. 1135] the case.

Q. Who makes up the experience rating?

A. The experience rating? I don't know whether the Virginia Bureau was doing that at that time or not. Here we had a risk that covered in more states than Virginia. The Travelers may have gotten this. I don't know. But it doesn't hold true all the time.

Q. But there is some rule that this assured and also your company would report it so the experience rating could be made up, isn't there?

A. Our experience would have been reported to any Bureau that had jurisdiction.

Q. It naturally was reported in the ordinary course of events, wasn't it, or should have been?

A. We are a non-Bureau company. There are certain bureaus that the Travelers belongs to that we do not and we would not report to those bureaus. They may have gotten part of the experience from a bureau that we would be forced to report to but I can't say that they secured our entire experience.

Q. You can't say that they didn't get it, can you?

A. No, I can't.

Q. If you were about to take over a risk that had been declined, as an underwriter you certainly would want all the information you could get about why that risk was declined, wouldn't you?

A. Certainly, I would.

Q. You don't think the Travelers Company would be any [fol. 1136] different in that respect, do you?

A. I can't answer for the Travelers. I can only answer for myself.

Q. The Travelers is a first-class company, isn't it?

A. Yes, sir, the Travelers is a first-class company and, as I say, in the New York office here——

Q. It is a very successful company, isn't it?

A. The Spectator will prove that.

Q. So they evidently follow good practices in their under-

writing or they wouldn't have such good results? Isn't that true?

A. That is true. As an underwriter I am forced to agree with you.

Q. Isn't it very probable that the Travelers Company, when this risk was mentioned to them, made a study of the problem down there and evidently thought they had solved it with their engineering department to the extent that they were willing to take the risk in spite of the bad history that the risk had? In other words, they may have required a change of drivers or an improvement in the equipment or whatever was the source of the difficulty that your company was unable to overcome with its service departments?

A. Well, it doesn't hold true all the way that just because the risk is bad a company won't take it. I have taken risks that were bad and other companies were getting off and if a man starts down here at John Street and goes up the line, in and out one door after another, he will come away with a binder and I don't care how much of a dog it is.

Q. Do you know whether the Travelers is continuing to carry this risk?

A. I believe they are still on the line.

[fol. 1137] Q. And that has been how long ago?

A. From my records here, they picked it up on November 1, 1934.

Q. That has been between four and five years that they have continued to carry this risk and they evidently haven't met with such bad fortune that they have rejected it?

A. You can't be sure of that either. Some companies will take a broker's or an agent's entire account and if they can make a profit over all, they are going to stick with the dogs and also the good ones. Other companies will try to underwrite the individual risks. It may possibly be that the particular producers' writings were so large that, fitting into a line that had been unprofitable, would not have made much of a difference in his overall. He may have been ripe for an accommodation line. So there are so many things that enter into the business as between brokers and companies and agents and companies that you can't really pin it down to a line.

Q. You think they might have covered other risks that were profitable that would offset the losses on this particular risk?

A. Their accounts over years may have shown up a profit.

Q. And you don't know whether the Travelers has had a successful experience with that risk or not?

A. No, I do not.

Q. If they have had a successful experience with that risk, would that indicate that their service department has been more successful in handling the situation than yours was?

A. No.

[fol. 1138] Redirect examination.

By Mr. Christian:

Q. Mr. Sutcliffe, when you spoke of risks as though they varied only with the degree of negligence or care of the drivers and the efficiency or inefficiency of the equipment, I got the impression that in the argument between you and Mr. Staples you were admitting those were the only things that caused variations in accident frequency experience on a risk. Until I had heard that discussion I was under the impression that notwithstanding people used the same kind of equipment and exactly the same kind of drivers from the standpoint of care they exercise, and performed the same tasks that an accident frequency experience on the one risk might vary from the accident frequency experience on the other risk from traffic conditions or the territory through which the men do this task or from the hours or work that are imposed on the men or from whether the men at the beginning are as highly paid and competent and intelligent men as others, and so on. I ask you now am I right that there are other factors than the two you and Mr. Staples mentioned or is that an exhaustive enumeration of the factors that will determine experience on a risk?

A. No, I didn't say those were the only two factors. I replied to that question stating that the blanket word "negligence" would have to be used because I couldn't pin it down. I think there were two questions that you gave me.

Q. But an underwriter will often see a cycle of different experience, depending on traffic conditions and where the operation is conducted?

[fol. 1139] A. Yes, that is always considered—what caused the accident.

Q. In addition to that, am I not right in thinking that accident frequency experience and loss experience may vary greatly between individual risks? That is, on some risks

you get accidents that don't cause big losses and on other risks, without any apparent cause, you get accidents that do cause big losses?

A. Certainly those conditions exist.

Mr. Christian: I also offer in evidence the quotation by "The Eastern Underwriter" in its August 26, 1938, report of the Canadian Insurance Superintendents' Annual Conference of the part of the report of the Fire Insurance Committee of the association of superintendents in the Provinces of Canada, bearing on resident agency laws.

Note: The following is a copy of the portions of the article referred to:

"Resident Agent Law

"A major portion of the report of the committee was devoted to discussion of the resident agent law. It submitted the text of this portion of the law of each of the Provinces, except Quebec. In general they require that policies covering risks in the Province shall be countersigned by a resident agent who shall receive the commission or some part thereof. The Alberta law provides that the agent's portion shall not be less than one-third of the whole commission. Some laws permit head offices to countersign policies 'on behalf' of a resident agent, but require that they shall report details of such policies to the resident agent.

[fol. 1140] "The committee says that experience has shown that agents, especially in western Canada, require the protection of a resident agent law. It suggests that a uniform law may be drafted 'on the principal that the resident agent law is a matter of the payment of commission to a resident agent.' It says in part:

" 'In considering the drafting of a uniform law there are certain questions with regard to which we should, if possible, have unanimity of opinion. Should a resident agent law be made applicable to all classes of insurers? Should there be any distinction between insurance covering physical property and insurance of the person? Should an exception be made as regards those insurers who do not use the agency system or should a company be compelled by law to have agents? The reasonableness of requiring any resident agent's approval of the issue of a contract should be carefully reviewed in its relation to business of the public. Is

it advisable to set out in the statute the rate of remuneration which must be payable to the resident agent or should that matter be left to the accepted principles of brokerage? Should it be a legal requirement that copies of policies or countersigned policies be held by the countersigning agent and is the expense commensurate with any benefit that may be derived from such a requirement? It may be that some amendment to subsisting legislation could be drafted which would carry out the intent and spirit of a resident agent law without interfering with business as a whole and without adding to the expense incurred by the companies in the matter of acquisition cost.

[fol. 1141] "Difficulties With Law

"'The failure to have a policy countersigned by a resident agent does not in any way render a contract invalid as against the insured. Undoubtedly the whole purpose of the resident agent law is a matter of the payment of commission to a resident agent in the province in which the subject matter of the insurance is situate. In none of the acts appear the words 'local agent' which would localize the payment of commission but the reference is to a 'resident agent who holds a certificate of authority from the superintendent.' Many of the companies have experienced difficulty in complying with the provisions of the act in cases where the insured has expressly asked that the commission payable under the resident agent law be paid to a specified agent, thus conflicting with the regulations of some of the associations.

"'Your committee has questioned many insurers as to the method of securing the countersignature of a contract across Canada and the time involved in complying with the requirements of the various provinces. Some insurers have advised your committee that it takes from three to six weeks depending, of course, on the prompt attention given the requirement by the resident agent who has been asked to countersign the contract. The countersigning of a contract across Canada involves an added expense and there are undoubtedly delays in the issue of the contract to the insured who wants his business transacted promptly and it might be that business other than insurance is affected by such delay. Accepting the principle of the resident agent law and granting that details in connection with it are more or less a matter of concern to the particular

[fol. 1142] province, nevertheless, your committee is of the opinion that the effect on business as a whole and the delays and expense involved in carrying out the provisions of the law can be obviated by an amendment to the insurance acts of those provinces in which such a law is presently in force which would carry out the recognized principle of the resident agent law and especially with regard to blanket or schedule contracts covering property across Canada.

"'To simplify procedure, your committee therefore recommends to the conference the consideration of an amendment to subsisting law to the effect that:

"'An insurer issuing a contract of insurance which is required to be countersigned in accordance with the provisions of this section shall be deemed to have complied therewith if it files with the Superintendent of Insurance of the province in which the contract has been issued a statement duly verified by the insurer in a manner satisfactory to the Superintendent, showing:

"'(a) the name and address of the insured;

"'(b) the amount of insurance covering in each province effected under the contract;

[fol. 1143] "'(c) the amount of the premium on such insurance in each province; and

"'(d) the name of the agent or agents in each province to whom commission on such contract will be paid and the amount of such commission.'"

William C. Thomas, a witness called on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Please state your present business connection and occupation?

A. I am a partner of Flynn, Harrison & Conroy, Insurance Agents and Brokers, 99 John, New York City.

Q. What was your occupation prior to the time you became a partner in this firm?

A. Manager of a general agency in Pittsburgh, Pennsylvania. That was over twenty years ago.

Q. And how long have you been in New York City. Since then?

A. Since then and before then, as an underwriter previously for one of the casualty companies.

Q. Will you please give me a general description of the personnel in your office, how many people there are, and what they are supposed to do?

A. We have three partners, we have a Fire Insurance Department, a Life Insurance Department, a Casualty Department, a Bonding Department, engineer and clerks. We have in all about 24 people, exclusive of partners.

Q. If there is any general way in which you could characterize your business, I would like you to do it?

A. We do a business in excess of a million dollars.

[fol. 1144] Q. Of premiums per year?

A. That is right, all direct business.

Q. Do you consider your firm a large one or a small one, comparing yours, for instance, to Marsh & McLennan, and Johnson & Higgins?

A. We would not be in their class but we are considered a fairly large concern.

Q. Is there any substantial volume of the business of your firm in casualty, surety and fire lines which covers in other States than New York?

A 75 percent at least.

Q. What sort of casualty and surety risks are included among those produced? Just a limited number or all the various lines of casualty and bonds?

A. It covers practically the entire field of insurance.

Q. Could you enumerate specific states where this coverage exists, or is it more or less countrywide?

A. Countrywide.

Q. Are these risks which are countrywide usually rated by manual or are they equity or experience rated as a rule?

A. That all depends on the risk and the type of business.

Q. What are the lines of business in which the assureds are engaged?

A. They are nationwide manufacturers and distributors and financial institutions, wholesalers and contractors.

Q. And some of them are natural persons?

A. Some of them.

[fol. 1145] Q. In this case the question has arisen whether the New York producer is able to produce this business covering outside of his own locality because of his personal

relations with officers or directors of assureds and the desire of these latter people to see a friend or relative receive commissions or whether there is a sound economic reason for the producer in a metropolitan area occupying the status of the producer of this business covering elsewhere? I will ask you to say from your experience which is ordinarily the fact as to this?

A. I can only reply as to our own organization, that our business is, most of it, obtained on a competitive basis.

Q. Describe the process yourself, beginning when you decide that you want to try to get a line of business and carrying it through for a period of years after you get into it.

A. First, you have got to make your contact. That may be made in many ways. It may be made through friendship or financial connections or various other ways. The next step is to persuade the prospective client to make a survey of his insurance on a competitive basis, understanding that if we can improve the prior program the business will be placed with us and, if we are successful and the man carries out his word, the business is turned over to us in its entirety. From that point on we proceed to carry out the program that we have outlined.

Q. What is the usual amount of working days that a person like yourself and his assistants would put in between the time that the idea first comes into his head of establishing this relationship with an assured and the time the survey is completed and you come to occupy the position to him of his insurance broker?

[fol. 1146] A. That can vary from one week to two or three years. We have had accounts we have worked on for three or four years before we have finally broken through and some we never break through.

Q. Do you find that his having confidence in you to preserve inviolable what he tells you about his business secrets plays a part in his willingness to let you look into his business or does he let any Tom, Dick, and Harry who comes along know all that he will tell his broker?

A. No, we have certain people, financial and otherwise, that we can refer to as references as having done business with over twenty years, and some of those references carry considerable weight.

Q. I want you to develop, if you can, what you think is the economic justification for what defendants' attorney calls giving these local agents the run-around? What does an as-

sured get out of it? What does this country get out of people like you?

A. Let me say at the outset that if we had to divide all of our commissions with local agents we wouldn't be in business, couldn't afford to be in business. We deal with concerns who, for economic reasons, wish to concentrate their insurance buying at one point. They wish to deal with one firm or corporation and don't want their business spread all over the country through a hundred or more general agents. By concentration they can effect considerable economy in cost. They can improve their coverage by dealing with a highly technical organization that has the means to specialize in the various forms of insurance, and they have one person or one corporation to hold responsible that they are in daily contact with which would be impossible if that business were to be spread all over the country. It would be [fol. 1147] cumbersome and expensive. That is the method by which we obtain the business. We handle all the contacts between our client and the company, dealing direct with the company.

Q. If I have a need for insurance coverage covering an automobile fleet that operates nationally, is there any advantage to me to have the coverage in one particular company rather than to have it scattered around among different companies?

A. There is a decided advantage in concentrating.

Q. If I were a gasoline distributor, for instance, over the country, would there be any benefit to me and, if so, what would be the benefit, in having all of that coverage in some one company like the Travelers instead of having it scattered through a dozen companies?

A. You certainly increase your buying power. You build up a premium wall by concentration and you are assured of standardization of service. Besides your local cumbersome rating details, such as fleet discounts and various other rating factors, it would be extremely cumbersome to get all those together and get them separately insured in various localities and you lose a decided advantage.

Q. How does an assured gain, after he has his coverage, from having a person like yourself to contact and hold responsible for everything about that coverage over the country? For instance, is his communication with you an easy thing or a frequent thing?

A. It is a frequent thing. There are frequent meetings held and constant telephone conversations. We have our engineer constantly calling at various points. We have each department head taking up his problems with the insurance buyer or the insurance manager, whatever he happens to be. [fol. 1148] I would say that we are in daily touch with our principal assureds.

Q. Please say, when you produce these coverages, whether you always place them with a general agent of the company or whether they are always subjected in some other way to additional acquisition or production expense beyond what you receive?

A. We deal directly with the companies and not through general agents or so-called Borough Agents here in New York. If the company pays any additional acquisition cost, it is something we don't concern ourselves about but if they do and we have any question as to experience, we will give no weight to any additional compensation that is paid other than what is paid to our own office which is composed of strictly brokerage fees, with the exception that we are, on surety business, a general agent of one of the larger surety companies.

Q. What is the name of that company?

A. United States Fidelity and Guaranty Company.

Q. Are you ever in a position where, instead of your producer's commission being maximum as stated in the Acquisition Cost Conference Rules, your commission is a lesser amount than that?

A. Our commission is that which the Acquisition Cost Rules provide for a broker with the exception of surety business which is placed with the United States Fidelity & Guaranty Company.

Q. On these equity rated risks is your commission always the maximum or does it come down?

A. On equity rates it is a matter of negotiation with the company as to what the producer's contribution will be and what the company's contribution may be. The commission may only be one-third of the full commission, it may be a half [fol. 1149] and, in some cases it may be the entire brokerage commission. That is a subject-matter for the company to decide.

Q. If you get only a third of the producer's commission on an equity rated risk, am I right in my impression that

in making up the premium that reduction is taken into account?

A. That is correct.

Q. How does such a producer go about selecting the particular insurance company with which to place any particular risk?

A. An insurance broker is dealing with all of the companies. He knows his markets pretty well or he should know them. He knows that one company will particularly fit the needs of a certain assured, whereas another company may not be fully equipped to handle the line. It may be a question of locality. Some companies are spread out in many localities and some are confined to certain parts of the country. You have to appraise the company and see whether they can render the service which your assured requires.

Q. You have no allegiance to any, as I understand, except in the case of the U. S. F. & G. Company?

A. No, and, strange as it may be, we do considerably more business with other companies than we do with the U. S. F. & G.

Q. You don't have any territory for it for which you are responsible?

A. No.

Q. Do you place business with a considerable number of these casualty and surety companies or just one or two?

A. Our business is pretty well spread all over the street among the larger companies.

Q. Isn't it also a fact, or am I wrong, that some com-
[fol. 1150] panies will have underwriters that will be more liberal in their views of certain sorts of risks than other underwriters for other companies and that therefore you would be influenced in your selection by taking business to a company which would view it more liberally from the standpoint of the insured if you could identify such a company?

A. That is true. That is true of all business. Certain underwriters like certain types of business and there would be a difference of opinion and an underwriter of another company will have nothing to do with that type of business. That is why a broker must know the market.

Q. You spoke of certain localities of coverage of a particular risk that you might think caused it to be more ad-

vantageous to you to place with one company than with another. Why is that?

A. Well, as an illustration, I will assume that I have a risk in Texas. I would be very foolish to place that with an insurance company that did very little business in the State of Texas and had no facilities for servicing it.

Q. Among the leading companies do you have any one company that you think is better in all lines of service than in the others?

A. No, absolutely not.

Q. Do you ever have occasion, after you place business with a particular company, to decide that you want to change that risk over to another company, even though the first company is still willing to carry it at the same rate?

A. That is done very often.

Q. What are the things that will lead you to make a change like that, as a rule?

A. Poor service or a better price from another company.

[fol. 1151] Q. You do it on occasion because of poor service as well as, on other occasions, for better service?

A. I think we make the right choice in the beginning, as a rule.

Q. Do you find that your assureds question the wisdom of your selection of the company or question the wisdom of any change in the company when you change it or do you find ordinarily that they accept your views about that?

A. With the exception of financial institutions, we have only been directed by one client to place his business in a certain company. That choice is left entirely up to us.

Q. What is the distinguishing feature between financial institutions and other assureds with reference to that?

A. Banks like reciprocal business. If a company has a big deposit with a bank, it will naturally like to reciprocate and turn some of its insurance over to that company. They are solicited by the insurance companies on that basis.

Q. Would such a producer as you ordinarily be able to make a change from one company to another, assuming they are both companies that are reputable, without the assured or his representative in charge of placing his insurance making any comment on it at all?

A. No, we would never make a change without consulting our assured and telling them why we recommended the change.

Q. Your experience then is that they usually say "O. K.," or do they usually make objection?

A. So far they haven't.

Q. Do you ever find any of your prospective assureds are hooked up with mutual companies when you try to get business from them?

A. Yes, we do. We attempt to obtain that business and [fol. 1152] sometimes succeed and sometimes do not and some of our clients have part of their insurance in the mutuals.

Q. Have you placed it in those mutuals?

A. We don't place it there. From some of our clients we receive a service fee for handling it by their paying us part of the dividend they receive from the mutuals.

Q. Is it your policy, as a general thing, when you have a complete carte blanche about where to place business, to place it with the stock companies or mutual companies?

A. We are strong advocates of stock insurance. We have been brought up that way.

Q. Would you say that you would have ability, if you were so disposed, to place any of your customers' business in mutual companies?

A. I am afraid that if we got strongly in back of it that most of them would go mutual under present conditions.

Q. Have you ever found it expedient or advantageous to your assured for you to recommend to him that he put any part of his coverage in a company not admitted in a locality of the coverage?

A. No.

Q. You usually want it in a company that is admitted, do you?

A. Absolutely.

Q. Would that be so as to the surety business to the same extent that it would be as to the casualty business?

A. Absolutely.

Q. In making these surveys of which you speak and making up the insurance plan for the assured, is it your custom to go to the localities of the coverage or do you do that from here?

[fol. 1153] A. If it is necessary, we have an engineer who visits the various localities.

Q. How about after you have gotten the line and are serving it, do you find it necessary at times to go into the locality then?

A. Very often.

Q. What are the occasions that will make you go into a coverage locality?

A. Safety work particularly and educational work.

Q. Is it a rare thing or very frequent thing that you are required to go around to these coverage localities?

A. It isn't necessary as a rule unless there may be a particular top executive located out of the State whom we find it necessary to confer with occasionally, but where the entire insurance is concentrated in New York under a competent insurance manager, it is very seldom necessary to go out to the various localities.

Q. By what processes are you enabled to service automobile fleet liability risks and compensation risks without going to the localities?

A. So far we have produced results. The business has been increased here, so our method can't be very far wrong.

Q. Who does that servicing work where it has to be done in the locality, if you don't do it?

A. We outline to the company just how we wish it handled and try to standardize the way it will be handled in all localities and that is done by negotiation right here in New York and we have reports rendered to us by the companies periodically and we have the experience submitted to us and [fol. 1154] accident frequency and various other factors that enter into. So we are constantly in touch with the situation all over the country.

Q. Through what personnel does the company gain the knowledge to make these reports to you?

A. Through its own engineering department.

Q. Do you ever hear anything from their claims department?

A. We have their claim department instructed to confer directly with us when necessary.

Q. Have you found in your experience emergencies arise that cause losses to assureds because you are not on the ground where the accident happens and in physical contact with the risk?

A. We haven't so far.

Q. How do you go about getting proper cooperation from local representatives of these assureds in the coverage localities when you don't know those men personally?

A. We outline a program which, as a rule, clears through a control department, or whatever you choose to term it,

and instructions go out to these various managers as to what is expected of them and how they are to handle their insurance affairs or anything pertaining to it.

Q. Where is that control department located?

A. That control department is located at the head office.

Q. And that would be here in New York?

A. Here in New York.

Q. When coverage questions arise in the various localities are you advised that a coverage question has arisen?

A. Yes.

[fol. 1155] Q. What do you do then? Do you have to go down to the coverage locality to get that straightened out or what do you do?

A. We straighten it out with the head office and have the head office instruct their departments what to do.

Q. Do you find that you are delayed very much in doing that? I mean, does it take you a week or two, or do you pick up the telephone?

A. Do it over the telephone.

Q. Do you find that you are not able to efficiently represent these assureds because you don't have an agency contract with a company but are an independent man?

A. We don't want an agency contract. In fact, our sales argument is that we are not tied up to any individual company. In other words, we have the insured's interest or client's interest in mind rather than our own selfish interests.

Q. Is there any respect in which you owe any duty to the company?

A. None whatsoever.

Q. There was a suggestion that maybe a broker wouldn't have quite the entree to a company that an agent would have when a coverage question arises. Have you ever experienced that?

A. No.

Q. Where you are left free to decide the matter yourself, have you ever found it expedient to divide your producer's commission with local agents in these various coverage localities so as to have them interested in serving you and the assured and getting their help in furnishing services?

A. In a few instances, yes.

[fol. 1156] Q. Where you have found that expedient have you made an arrangement with such a party?

A. We have.

Q. Speaking generally about your business, do you generally find that there is any expediency for doing that—dividing commissions with local agents?

A. It seldom occurs.

Q. Do you ever have to make that division because your assured asks you to make it?

A. Occasionally, yes.

Q. What are the reasons for that?

A. Purely friendship on the part of our client who may know some real estate agent who has an insurance license.

Q. In these cases where you have divided your commission with an agent, either because the assured wanted you to do it, or for some other reason, have you found that that operates to relieve you of work and responsibility?

A. Only where we select the agent. Where we select the agent we go into a town and look over the various agencies and see if anyone is qualified to give the service which we are looking for.

Q. Do you have any specific agreement in such a case where you willingly associate him with you as to what his function is to be?

A. Absolutely.

Q. He just doesn't say, "You give me fifty per cent and I will cooperate with you?"

A. No. We outline to him what we expect him to do.

Q. Do you ever outline to him things you don't want him to do?

[fol. 1157] A. He is authorized to do only certain things which we communicate with him about. He uses no initiative whatsoever.

Q. Have you had the experience since these fifty-fifty laws and other laws about dividing commissions went into effect of the companies coming to you and telling you that they had to pay part of the producer's commission to agents in localities of coverage on casualty and surety lines and wanted you to give up part of your producer's commission so they wouldn't suffer any loss?

A. We have.

Q. What have you done in those cases?

A. Refused to accept any reduced commission.

Q. Have you been paid your full commission?

A. We have.

Q. Do agents in the localities of coverage ever make suggestions to the assureds, in these cases where you do have the association, for improvement of the coverage or correction of the policies, and so forth, or do they deal through you if they have any such suggestions to make?

A. They deal entirely through us and have no direct contact with the assured.

Q. Why is that?

A. We don't permit them to have. They are not authorized to have any direct contact.

Q. Suppose one of these agents is a member of some local agents' organization that requires him to contact the assured and thoroughly go into everything he can find out before he will countersign a policy, what are you going to do about it?

[fol. 1158] A. Not do any business with him.

Q. Suppose his company backs him up and says that they don't sympathize with your views, what are you going to do then?

A. Take it away from the company.

Q. Where you have told an agent that you didn't want him to contact the assured or where he has just been a countersigner and he exercises the benefit of the information he has gotten as to the kind of risk and he goes directly to the assured and starts asking questions and making suggestions, what has been your experience that the local representatives of the assureds usually do in those circumstances?

A. Where a few instances of that have occurred they have immediately got in contact with us and we have changed the agency.

Q. Where those representatives are locally approached and they refer those agents to you, do they refer it to their control office in New York and the latter refers to you or does the local man communicate with you?

A. Both. When they learn we control the line they many times solicit business for their agencies. Other times they go direct to the buyer of insurance and, as a rule, he will refer them to us just to save the embarrassment of turning the fellow down.

Q. Suppose one of these assureds had a plant superintendent in Virginia and one of these countersigning agents went to him and started making suggestions and asking questions, what would that plant superintendent do?

A. I can't tell you that except what has occurred with our business. We deal direct with the insurance buyer here in New York and plant superintendents have nothing to do with the insurance.

[fol. 1159] Q. Have you ever had the experience of local representatives in the locality of coverage making friends with insurance agents and bringing up the question with their superiors that they would like to give them some business or would like to have some way of giving some commissions to them?

A. Our business is controlled right here in New York. We don't have the difficulty with the local agent trying to work through a local plant superintendent.

Q. Can you recall any instances where benefits to your assureds have resulted from efforts of local agents to contact those assureds and criticize or try to improve what you have done for them?

A. The only time that a local agent has been able to do anything was when he was politically able to help a contractor in a local situation. That does occur.

Q. Is his help to the contractor in getting contracts or is that something about servicing insurance?

A. Nothing to do with servicing insurance at all but he is able to politically do for the contractor something in connection with the fulfilment of his contract, either in facilitating payments or changing orders, or something of that sort.

Q. It has been suggested here that producers always give up a part of a fire insurance commission to a local agent. What do you find brokers usually get when they produce fire business?

A. We don't give up anything. What the company, under its agency or franchise agreement, give to the local agent, we don't know. That probably varies.

[fol. 1160] Q. What will you average on your fire business?

A. I can't answer that but I can say that we average over all thirteen per cent.

Q. And it runs as high as fifteen per cent in some cases?

A. It may run as high as twenty but our general average overall is thirteen per cent.

Q. Does such a producer as yourself ordinarily keep a record of what agent has countersigned the insurance coverage in each of the several States?

A. Only where we initiate the transaction and negotiate with the agent to service the line in many respects, but where it is purely a countersignature we don't know who countersigns the policy unless we happen to look at the policy. We make no record of it.

Q. And when you deliver the policy to the insured you are left without any record as to who countersigned it?

A. It doesn't make any difference to us.

Q. What type of man usually places the insurance for these assureds?

A. He may be the Treasurer, he may be the Assistant Treasurer, or he may be the Insurance Manager.

Q. Is he usually a pretty well-paid man?

A. Oh, yes, an insurance manager, I would say, is a well-paid man.

Q. Does he give much time to it?

A. He gives his entire time to it.

Q. Does he have an interest in matters of accident frequency and of claims and the like?

A. I should think he would.

[fol. 1161] Q. What is the relationship between yourself, or a producer such as yourself, and such a man?

A. It would have to be a close one.

Q. Will he answer any question you ask him about his company, bearing on any insurance matters?

A. He will.

Q. And tell you anything you want to know about his business practically?

A. Yes, he must, particularly if he is interested in any surety lines. He must tell us anything we require, and furnish us financial statements and details.

Q. I was talking more about business secrets and company information that he gives you. Does he give you that freely or, when you ask certain questions, does he say he can't tell you that without the President giving him permission to talk to you?

A. There are times when we must go to the higher executives to secure information of that type.

Q. In those cases where your relationship continues with that assured, do you usually get the information that you need, no matter if it is considered confidential?

A. We have to have it.

Q. You mean you are not able to function without getting it?

A. No, he can't get what he needs unless he does furnish it.

Cross-examination.

By Mr. Staples:

Q. Does the United States Fidelity & Guaranty Company write casualty business as well as surety?

[fol. 1162] A. Correct.

Q. Do you have a non-resident broker's license in Virginia?

A. We have.

Q. Why did you take out that license?

A. We have business in Virginia.

Q. What kind of business do you do in Virginia that would require you to have that license?

A. We have fire, casualty, and we never know when we may have a bond as some of our clients are contractors that do work all over the United States.

Q. Do you divide the commissions with any Virginia agents under your brokerage license?

A. Not to my knowledge. We don't divide. We don't know what the agent receives from the company.

Q. Do you actually go down into Virginia and solicit business there?

A. No.

Q. Why do you have a Virginia non-resident broker's license?

A. We think that we have to have a broker's license wherever we have business located.

Q. Where did you get that idea from?

A. That is just our idea. We have been following that practice. We do not actually solicit business outside of two or three States which are confined to nearby localities.

Q. It is necessary for you to have a Virginia broker's license in order for the company not to pay a countersigning agent, particularly in the fire business, his full commissions and in order for him to be able to give the company [fol. 1163] credit for part of the commissions they pay you, isn't it?

A. I don't know except that I know that we have that license and I have always given orders that wherever we have business we shall be licensed as a non-resident broker.

Q. Do the companies request you to take out the license?

A. No, the company may ask us if we have a license. That occasionally occurs.

Q. What life insurance company do you represent?

A. We represent many life insurance companies.

Q. As agent or as broker?

A. In New York State you can't be a broker; you must be an agent. You must be licensed as an agent of every company you do business with. That refers to life insurance.

Q. What percentage of your business is life insurance?

A. Well, I can't tell you except to say it is a very small department but it is on a paying basis and we are making a little money on it but it is a small percentage.

Q. What about the fire department?

A. The fire department is also more or less of a pup.

Q. Your principal business is casualty?

A. The principal business is casualty and surety.

Q. You say you have an engineer employed by your office?

A. That is correct.

Q. Do you have more than one?

A. No, we have only one.

Q. And you write business all over the United States?

[fol. 1164]. A. That is correct.

Q. Does your office undertake to furnish cooperation to the insurance companies to persuade the assured to carry out the recommendations that these engineers make to improve the assured's plants or automobile fleets, or whatever it is, to reduce losses?

A. That is a big part of our work. We many times have to originate the program for the safety work with the cooperation of the company engineers.

Q. Do you have any trouble in persuading the assureds to carry out these engineers' recommendations?

A. Some of them, yes—a good many of them. It is an educational work.

Q. Do you find that these company engineers' recommendations are always reliable?

A. No. That is the purpose of employing an engineer in our organization.

Q. How often does your engineer have to go out of New York?

A. He is out of town very frequently.

Q. Twice a month?

A. He is out three days a week.

Q. Is it customary for your engineer to take a trip and look over every recommendation that the insurance company engineers make for changes in equipment or in improvements in plants or matters of that kind which affect the risks and are designed to reduce accident losses?

A. No, he is more or less of a trouble-shooter and he functions also in this manner, that he analyzes the company re-
[fol. 1165] ports of the engineers and, in turn, knows——

Q. What do you mean by a "trouble-shooter"?

A. If there is a particularly high frequency in one location or it has the appearance of needing attention, he may be shot out to that point to see what the trouble is, to see whether he can install a program that is going to relieve that condition.

Q. He doesn't so much review the recommendations of the other engineers as he does to try to initiate improvements, or what does he do?

A. He does both. Then the department head also supervises all of those recommendations that are sent out to our clients.

Q. What do you mean by the department head—in your office?

A. If it is a fire insurance matter, the manager of the Fire Insurance Department; if it is a casualty, the manager of the Casualty Department, or maybe the partners will review those various reports, particularly if they are important.

Q. How many different casualty contracts or policies would you say that your office has?

A. I couldn't give you any idea.

Q. As many as a thousand?

A. That is a hard question to answer. I couldn't answer that. There are bound to be a good many policies because along with the larger business there are many small personal accounts. How many automobile policies, and things of that nature there are, I haven't the slightest idea.

Q. Do you know how many States you have risks covering in?

A. That varies. We may have risks in 15 or 20 States or at one time we may only have them in five or ten States.
[fol. 1166] We have a large contracting business and those contractors go all over the country.

Q. Have you ever had any in California?

A. Yes.

Q. What percentage of cases in which insurance company engineers make recommendations for changes and improvements in plants and automobile fleets, and matters of that kind, do you think your engineer inspects?

A. He inspects all of them, or I hope he does. That is his duty.

Q. Would he go to California and inspect a risk out there?

A. If necessary, yes.

Q. I am talking about whether you think it would be necessary?

A. Just at the moment there is no risk in California that would require such service. I have been out to California in connection with business that we had and that business has been completed and there was no longer any necessity for anybody to go to California.

Q. You mean if you did have a risk in California with the Travelers, I will say, and their engineers should recommend certain changes and improvements to be put into effect by the assured, your engineer would go out there?

A. If there is any difference of opinion between the assured and the company and providing it was of sufficient size to warrant the expense.

Q. Do you ever have to stand between the company and the assured on what you consider to be unreasonable demands of the service department for making changes?

A. Let us put it another way. They are not unreasonable. There are a great many foolish recommendations made by immature men in the employ of the companies.

[fol. 1167] Q. That is a pretty substantial part of the agent's work, trying to prevent the insured from being imposed on by these engineers or inspectors that want to recommend the expenditure of a whole lot of money and probably unreasonably; isn't that true?

A. Largely so, yes.

Q. Would you call that an important service that you render in that respect, or not?

A. I consider it an essential service that we render.

Q. You say that this business is obtained on a competitive basis. What do you mean by that? I am referring to your business as a broker in the casualty line.

A. Unless we can recommend a better insurance set-up or program, we have no right to expect any prospective client to hand the business over to us unless we can show some improvement.

Q. Just what do you mean by a program?

A. An entire insurance program of all their insurance requirements.

Q. Can't you give me some idea? I really don't understand just what you mean by that?

A. You may have a casualty risk, you may have a marine risk, you may have a fire risk, and we take them to pieces and fit them together and make our suit of clothes and if it shits you we expect you to buy it as a completed garment.

Q. You mean in a case of that kind that you would figure out a different amount of insurance that a man ought to carry?

A. That might be part of it and it might be an appraisal would enter into the picture. You may be carrying too much [fol. 1168] or you may be carrying too little insurance and you may have exposures that are probably not covered.

Q. That is in fire insurance?

A. I am speaking of many instances in connection with negligence or liability insurance. There are lots of exposures that may not have been properly covered and we may find defective contracts.

Q. Do you call a risk an exposure in the casualty line also? Is that a term you use?

A. Yes, we use that straight through—an exposure.

Q. After you figure out what you think is a proper amount of insurance for the man to carry for protection in these respective lines which are component parts of his entire coverage, we will say part fire, part casualty, part surety and part life——

A. Life comes under a different category entirely.

Q. Do you combine the fire and casualty very often?

A. Fire, casualty, and everything else except life.

Q. The fire and casualty are frequently combined, are they not?

A. Yes.

Q. Then what do you do after you figure that out before you submit the matter finally to the assured or the prospective assured? Do you take it around to the various companies and see what you can do with it?

A. We take it to one company. We pick our company. We don't go shopping a risk, as we call it here in New York. We pick a company that we believe is going to play ball with us and we negotiate with that one company.

Q. What do you negotiate about? What is the subject of the negotiation?

A. The subject of the negotiation concerns the service, [fol. 1169] coverage, and price.

Q. You mean the rate?

A. We don't deal so much in rates as what the ultimate net cost is going to be.

Q. That is bound to be controlled by the risk?

A. That is true. It may be a rate or it may be a price. It all depends on the type of insurance.

Q. You mean that you wouldn't use a rate to arrive at the price?

A. Fire insurance carries rates and other types of insurance may have flat premiums. If you get into the rating features you can talk all day about it. There are many different bases of arriving at premiums.

Q. I believe you said that in arriving at the rate you would sometimes knock off half or two-thirds of your broker's commission so as to get the rate down?

A. No, you misunderstood me. I didn't say that we would. It is done. Equity rating as provided for calls upon the producer to make a contribution in commission. We won't handle any line unless we think we can make a profit. We can't handle business at a loss. So if the company will not write the line without our contributing commission, we just don't want their business.

Q. I thought you said that you frequently received only half or a third of the commission?

A. I was answering a general question of custom, but our individual office won't write business on that basis because we can't afford to do it.

Q. But that is customary among the brokers in the city, isn't it?

A. It is customary among agents. It is customary for [fol. 1170] the entire insurance fraternity to do that. It is one of the methods of competing with mutual insurance.

Q. And does that happen in a New York State risk also?

A. No, it is not permitted in New York State.

Q. It is not permitted in Virginia either, is it?

A. I couldn't tell you. There are certain open States where it is permitted. How many of those are left I couldn't tell you, but gradually they are being eliminated.

Q. That isn't anything in the world except a rebate to the insured of part of the commission?

A. Call it what you want, but it is the way of the companies of holding some of their business.

Q. They regard it as rebating in New York, anyway, don't they, under the State laws up here?

A. No, what they regard as a rebate would be a violation of what is known as our anti-discrimination law.

Q. You mean you have got to charge everybody the same rate?

A. To be modified with whatever experience plan the Insurance Department may approve.

Q. How do you go about trying to get a better rate for your assured than one of your competitors?

A. That would take me weeks and weeks. I have been in this business close to thirty years. I have been a company official and I have been a general agent, a broker, and there are certainly things we have learned by experience and we are not broadcasting them.

[fol. 1171] Q. I didn't mean for you to give up any secrets.

A. That is a very difficult subject to discuss and I can discuss that with you for two weeks and take pages of testimony.

Q. I believe though that you do have means of getting better rates than your competitors do in these types of cases or in some of them, anyway?

A. In some of them, or we wouldn't be existing.

Q. And that is the real competition between the brokers up here who try to get this big line of business—which can get the best rate out of the company?

A. It isn't the best rate. You don't look at it in a big way. We are talking about risks that produce possibly fifty or sixty thousand dollars or maybe 150 thousand dollars overall. If that isn't handled properly there can be a great deal of waste.

Q. What do you mean by overall?

A. I mean we are talking about an assured who will pay premiums in a year of $50,000 or $60,000 or $150,000. Often it isn't very difficult to see how you can save an assured fifte-n or twenty thousand dollars on a big risk. You can do that without the violation of any rating rule or organi-

[fol. 1172] zation.

Q. Give me one illustration?

A. I will give you one illustration of a risk that we took over a year ago. The year is almost up and we have demonstrated a saving of in excess of $25,000.

Q. I mean an illustration of how you did it?

A. We found certain types of insurance should have been combined, that they were entitled to certain discounts. We found innumerable policies where the combination eliminated certain policy fees. We found rates had not been checked on fire insurance for years. Without the expenditure of any money we were able to reduce those rates. We were able to take some of the business out of mutuals and place it with the F. I. A. at considerable saving.

Q. What do you mean by discounts?

A. If you take a policy covering burglary insurance or hold-up insurance covering many locations where we found separate policies, the underwriting rules provide for certain discounts when you combine them and have it all under one policy. You find in Workmen's Compensation Insurance the same condition.

Q. You mean if you have one policy covering the same risk that might be covered in a number of other policies, when you combine them into one you get a lower rate?

A. That is correct. I could take the Fidelity schedules as an illustration. You might have a rate for $100,000 and if you put $50,000 more you can have that $150,000 written [fol. 1173] cheaper than you can for $100,000. They are some of the inconsistent things in this business. I will give you another illustration of a small policy I ran into the other day, known as a check forgery policy, that covered the head office and various other offices in smaller amounts, the premium for which was $1,000. I could write that insurance blanket overall and save them $300 and give them better insurance coverage.

Q. What policy fees did you refer to when you said that you would eliminate some policy fees?

A. Under compensation policies you have certain expense in what they call expense in loss constant charges and the minimum premiums of those can be combined under one policy, in many instances, with a saving of fees. There are innumerable things in this business.

Q. Does that apply, what are you speaking of, to these rates that extend over a number of different States?

A. That is correct.

Q. And if you combine the risks of half a dozen States into one policy you would get a better rate than a separate policy written in each of those States?

A. That is correct. We can take our retrospective Workmen's Compensation rating today and a risk may not qualify in one State but by combining with other States it may qualify and may produce a far better result. Those are all permissible things in this business.

Q. Do they have any standard rules that they apply to that?

A. Yes, they are all standard and approved by the various States.

Q. That is what you call interstate rating, isn't it?

[fol.1174] A. What we call retrospective rating which permits interstate rating, permits the combining of those various policies into one rating plan.

Q. Take the case of the premium that would be necessary under your New York laws. If you put that New York policy in with a Virginia policy, would that permit the scaling down of the charge for that New York policy when you arrive at the total?

A. Certainly. The higher the premium goes the less the expense loading becomes.

Q. What do you mean by the expense loading?

A. Out of every premium dollar there is a certain expense loading for the company for overhead, inspection service and audit fees. If they are dealing with 25 different policies they have 25 different loadings in it, all the same loading. If they are dealing with just one policy and one form of rating those fees are reduced and the higher the premium becomes the less the overhead, so that if you have a $50,000 risk here in the State of New York and you have $50,000 in two other states, by combining those policies under one rating plan you produce a better result than if you had the three individual policies.

Q. Who decides on that?

A. The insured decides whether to take it or not.

Q. Who decides on the rate?

A. The rates are fixed. You use the file rates, but the company simply agrees to a certain minimum premium and a certain maximum premium and the assured's return being determined by his loss ratio.

Q. Then you have to take that up with the insurance companies as to what they are willing to allow in that particular case?

[fol. 1175] A. No, that is fixed.

Q. Fixed by whom?

A. Fixed either by the rating authorities or——

Q. Or who else?

A. No one else except those States that have no rating authorities where they may be combined under one contract.

Q. In a risk in States which have no rating authorities or no fixed rates, the company could drop that down to most anything they wanted to when it comes to arriving at the total rate?

A. There are a few of those States left.

Q. Do you know how many of such States there are?

A. I would have to get one of the manuals to tell you that. I know there are not many of them.

Q. Why is it you do more business with other companies than you do for the United States Fidelity & Guaranty Company that you are General Agent for?

A. Well, that is an old association. The founder of our firm, the late Mr. Joseph A. Flynn, was the executive head of the F. & D. here and when he decided to go into the brokerage business all the surety companies made a great play for him and the United States Fidelity & Guaranty Company was the company elected when he formed the firm originally and later it branched off into general insurance. For instance, I was brought up in the casualty business and as our business was built up we employed experts in the various lines of insurance to handle those various departments. So that we are insurance brokers. We happen to have an agency contract on surety business with the United States Fidelity & Guaranty Company. The only advantage of that contract is that we would receive more commission on surety [fol. 1176] business from the U. S. F. & G. than we would from other companies.

Q. That is the reason I am at a loss to understand why it is you don't put your business with them if you receive a greater rate of commission.

A. We find we have got to spread our business pretty well over the street.

Q. Why do you do that if you get more commission from the United States Fidelity & Guaranty Company?

A. You are asking a question again that is hard to answer because one company on a particular line will be better than another company. It just happens that our class of business can be more readily handled by other companies than the U. S. F. & G.

Q. But if these companies specialize in certain types of business, how is it that you get these tremendously blanket coverages that cover everything? Why don't you split them up into the companies that are specializing in the component parts of that business?

A. That is a question that I wouldn't care to answer.

Q. I don't see exactly how it is you can reconcile those two propositions?

A. I am afraid I would have to educate you in the brokerage business if I answered that question to your satisfaction.

Q. You say that sometimes a broker changes from one insurance company to another the business which he controls. Is the reason for that that you think the company you change to can give better service?

A. Sometimes, but you are dealing largely in personalities and sometimes they are apt to clash. This fellow may [fol. 1177] not like the claim man or he may be dissatisfied with some other feature. It may be some unreasonable thing. So, to make everybody happy, you just change it over to another company.

Q. Would a broker change to another company that didn't give as good service because he was getting less commission [fol. 1178] from the company that he was with?

A. No, the commissions are standard. Our commissions are set by the Acquisition Cost Conference and I can say, as far as our office is concerned, that we wouldn't take one cent of extra commission from anybody.

Q. I wasn't speaking of your office because you said you never did write any business unless you got the full commission, but I was speaking of the custom generally.

A. I think in New York, as far as I know, the commission situation is cleaner than it is in any part of the country. I am speaking about where there are brokers.

Q. You don't think then that a New York broker would change his client into a company that he thought gave less desirable protection or less desirable service on account of the fact that he could get a greater commission from the company that he was changing to?

A. I can't answer that except I could say that I am a member of the New York Brokers Association and that we have never had a member of our Association cited for a violation of the Commission Rule. What other brokers do, I don't know.

Q. What is your opinion about it? You are pretty well familiar with this business.

A. I think that the reputable brokers, those that have established reputations, are not interested in those practices at all. We are not out to violate any laws. We wouldn't violate them knowingly.

Q. Would that be in violation of the law?

A. That is a violation of the New York law. The insurance department has set up machinery which is functioning [fol. 1179] today for violations of that situation.

Q. Then if a broker did transfer it to another company because he could get a better brokerage commission from the new company, do you think that would be in violation of the New York law?

A. I think it would be very unethical.

Q. I was trying to get your understanding of the law, whether that would be in violation of the law, or not?

A. It is not a violation of law here except as to fire insurance, but the companies would be in violation of the agreement under this Acquisition Cost Conference Rules which are filed with the Insurance Department and they are expected to live up to them. So the only agreement they might make to pay a higher rate of commission would be at least a violation of the agreement they have entered into under the jurisdiction of the Insurance Department. The broker wouldn't be in violation except as to fire insurance and he can be cited by the Insurance Department which would have a hearing and the penalty is taking, for a certain period, a lower rate than the standard commission.

Q. How would the Insurance Department ever find out he had done it?

A. The Insurance Department of the State of New York has the right to examine any of the companies or any of the insurance brokers. They can send a man into our office whenever they see fit to examine our books.

Q. You say that you have some clients who carry their insurance in mutual companies and pay you part of the dividends that they get for servicing the risk. How many of those would you say you had?

A. Not more than three. Most of them are mutual contracts that were in existence when we took the other insurance over and we just carried on for a fee for that particu-

[fol. 1180] lar end of the business they might have had in the mutuals.

Q. Is it customary for brokers in New York to solicit business on that basis from the prospective assureds?

A. No, it is sort of forced on them.

Q. You say that you never place your clients in a company that is not admitted to the State where the risk is. Why is that?

A. Well, we deal principally with companies that are admitted to all States. We don't deal with small insurance companies. We deal with companies like the Insurance Company of North America, the Home Insurance Company, Continental group and others. They are entered in all States. The same is true of casualty companies. We don't want insurance companies that are only entered in a few States. We want complete service wherever we may need it. The larger casualty companies are admitted to all States.

Q. You say that you have found it expedient in some cases to secure the services of local agents and that these local agents were able to render some political assistance in some cases. Are they the only cases that you have ever associated any local agents with you in?

A. No, I have two or three lines that I have selected a local agent to get local service.

Q. Why did you want the local service?

A. There were certain details that I thought could be better handled on the ground than we could handle here in New York because the man handling our client's insurance was located a considerable distance from New York. I went down in a certain town in Kentucky to make a survey the other day to see if I could find some local agents to give [fol. 1181] me some service that I required and found no agent down there qualified to give it to me.

Q. What kind of service did you want in that case?

A. I wanted service on a big bus line and I found nobody in the town who knew anything about that type of insurance.

Q. They probably didn't have any insurance of that kind there, did they?

A. No, the insurance on those bus lines is controlled in the large centers and there are very few companies that write the business.

Q. Local agents haven't had any experience with them?

A. They didn't know what it was all about.

Q. What types of service have there been that you have required local help on?

A. Particularly on fire insurance to go out and survey properties for us and particularly where there is constant change going on and they can be sort of watch-dogs and we would not have to be constantly on the ground.

Q. Suppose you have a bus risk down in Virginia, what sort of service would you want down there?

A. Down in Virginia you happen to have a man who knows all about the bus business and has an insurance company handling that class of business.

Q. What type of service would you want him to render if it had been in Virginia, for instance?

A. Particularly safety work. The business is pretty well concentrated in this country on that type of business. It is very difficult to go into some of these towns and find a local agent who knows much about the insurance business, with due respect to Mr. Bennett. Many of them are real estate dealers who know very little about the fire insurance. They [fol. 1182] may know something about automobile insurance but to get an office that knows all the various lines of insurance, you can only find those fellows in the larger centers.

Q. What is it a man wouldn't know about the bus insurance, for instance? You say they wouldn't know the safety work? What else is it that you want from a local agent?

A. There are many things he could do, particularly with their filings and bond requirements. There are many things he wouldn't know how to do and we would probably have to do ourselves. I would probably have to spend $1500 which would not have been necessary if I had found a local competent agent to handle it.

Q. What did you have to do? Did you send your own engineer down there?

A. I sent more than an engineer down there. I would have to send two or three of our executive staff down there.

Q. To hold safety meetings with the employees?

A. Do various things.

Q. Why is it that the insurance company can't hold safety meetings?

A. They don't happen to be in an insurance company, as far as primary insurance is concerned. They carry mostly excess insurance and carry their own primary insurance, so no insurance company is interested in the servicing of the line.

Q. What types of service have you sought where you actually have your local agents? You said you have told them what you wanted them to do. What did you want them to do?

A. Well, there may be at times at various points that we would like a local agent to serve us in connection with local [fol. 1183] rating boards, to advance what ideas we might have to those boards and carry through for us, and when we do that we make an arrangement for the division of the commission.

Q. There are cases, then, where it is to the advantage of the assured to have the combined service of the New York broker and the local resident agent, are there not?

A. That is where the agent isn't thrust upon us and the broker has a right to go out and choose what agent he wants to do business with but if it is any agent I can't say that we can use him.

Q. Why do you say that? There is nothing in the law involved in this case that prevents a broker from choosing his own agent?

A. Yes, there would be. I might designate, as an illustration, the Travelers Insurance Company to handle a risk for me at a given point and at that point the Travelers agent may not be the best qualified agent to handle my problems locally. He may represent some other company.

Q. But the Travelers has quite a number of very excellent agents?

A. I am just using the Travelers as an illustration. I might pick another company that wouldn't have such a representation as the Travelers.

Q. You wouldn't have to pick that company, would you?

A. I might, yes.

Q. Couldn't you pick a company that had a local agent you might want to associate with you?

A. No, the company that might have the best agent might not write the class of business that I am interested in.

Q. Then your client would be deprived of the benefit of any local service at all? Isn't that true?

A. No, he would not. If I thought he needed a local agent's service I would go out and employ some other agent, irrespective of whether he represented the company or not, [fol. 1184] because all I expect from that agent when I employ him is to be my eyes and report to me certain things that I want him to watch for me.

Q. You say you frequently go to these clients of yours and have to get some business secrets in order to properly handle their insurance business?

A. Counsel used the word "secrets". I don't call them secrets, but if we are expected to furnish our clients certain bonds, which are nothing more nor less than financial guaranties, we and the bonding companies or surety companies must know intimately every detail of their financial structure because that is the basis on which the bond is underwritten.

Q. That is a Fidelity bond?

A. No. I am not talking about Fidelity bonds. Fidelity bonds are insurance. I am talking about financial guaranties, bonds that guarantee the faithful performance, which is just like signing a note.

Q. The companies require that before they will go on the bond?

A. That is correct.

Q. Is there any other type of so-called business secrets that you would require?

A. Yes, there are some types of risks that involve secret formulas.

Q. Formulas?

A. Yes, cosmetics, pharmaceutical goods and many things that you insure against that the company must know what it is all about and they don't care to entrust that information to everybody.

Q. They have to entrust it to the company, don't they?

A. That is correct.

[fol. 1185] Q. So that you haven't got any secret information that the insurance company doesn't have?

A. No, I have never said so.

Q. I just didn't understand exactly.

A. I thought that is what counsel was leading up to, the fact that there was certain confidential information furnished that wasn't broadcast. That is true, but they have to furnish it anyway in order to fulfill what they have set out to do.

Q. There is no information that you would have to get from the assured that the insurance company itself wouldn't also get?

A. That is correct.

Redirect examination.

By Mr. Christian:-

Q. In order to insure one of these coverages for a concern like the DuPont Company that makes cellophane or rayon, you would have to have an understanding of the processes of fabrication in order to know the coverages, wouldn't you?

A. Not necessarily.

[fol. 1186] Q. What about in the Fidelity business? Do you ever want to know what salary they pay particular individuals?

A. Yes. That comes up many times in fidelity insurance.

Q. On excess line coverage or excess insurance, is it important for the insurance company to be admitted to the State of coverage?

A. I don't think it is important, no.

Q. Regarding the thing that you said would be unethical, as I understood it, for a broker to take business to another company to get a higher commission, were you talking about a higher commission than the Acquisition Cost Conference Rules permit?

A. Correct.

Q. Do you think it would be unethical, if I were an insurance company and you bring me a risk and I say I will take it but I won't pay but half of the producer's commission, for you to say, "I will take it to somebody else who will pay me the full Acquisition Cost Conference commission?"

A. No, I wouldn't hesitate a moment to do it provided I wasn't jeopardizing my client.

Q. So the unethical thing you were talking about is where you are going to take it to somebody who is going to secretly give you more than he has agreed to pay producers?

A. That is correct.

[fol. 1187] Q. About an underwriter when he views a risk, suppose I am the insurance manager of the General Motors Company and you are making a deal with me to take over all my casualty line, and you have in that public liability, Workmen's Compensation, plate glass, burglary, and every kind of insurance, and you go to one of these insurance companies and offer them the hold-up insurance and maybe the automobile risk and you say, "I have got

these other lines with some other insurance company," does the underwriter for that insurance company that you offer one class of that business that you select out of the whole thing approach the underwriting problem there with as much favor or the same favor or greater favor than he would if you offered him all the different lines? In other words, would he fear selection against him or wouldn't he?

A. He would prefer to have the entire line.

Q. Would he be inclined to think there was some reason why you were picking out one line and giving it to him that maybe was a reason that did not augur very well for his future prospects?

A. We just don't believe in spreading business on any one line. We believe in concentration.

Q. So you would pick out one company ordinarily, even though you had several different kinds of risks, and give it to the particular company whom you thought, considering everything, was best able to do the job for the assured in all of those lines?

A. That is right.

[fol. 1188] Re-cross examination.

By Mr. Staples:

Q. You say that you think that a broker would be justified in transferring his business from one insurance company to another,—that is a particular risk—if the company failed to pay the entire producer's commission; is that right?

A. That is correct. We take the position here in the City of New York today that we can't accept any lower commissions and exist.

Q. Suppose all of the companies who are admitted to a State are required to pay half of the producer's commission to a local agent in that State, that only leaves half of the producer's commission to go to the broker unless the company is willing to pay the broker also the overriding commission which would go to a General Agent; isn't that true?

A. If that were followed out we would go out of business. We would quit. The partners wouldn't receive five cents out of our business.

Q. But under those circumstances you wouldn't have any place to transfer that risk to, would you, under the ethical

rules which you have of transferring it from one company to another where all of them are operating under the same law and have to comply with it?

A. We just wouldn't be in business. We would go out of business. We can't exist on that. We get thirteen per cent as our average commission and we run an overhead of at least eight per cent. How could we possibly exist?

Q. What is your average commission in the casualty line?

A. I am talking about overall.

[fol. 1189] Q. Do you know what your average commission is in the casualty line?

A. Workmen's Compensation insurance runs from eight and one-half per cent to ten per cent. Liability insurance runs from fifteen to seventeen and one-half per cent for a broker.

Q. Those are standard broker's commissions?

A. That is correct.

C. K. VANDERFEEN, a witness called on behalf of the plaintiffs in rebuttal and having been first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you please state your name and occupation?

A. C. K. Vanderfeen, Statistician, National Bureau of Casualty and Surety Underwriters.

Q. Will you state the location of your office?

A. 60 John Street, New York City.

Q. Please say whether or not it is a fact that the Bureau keeps the accounts of the Acquisition Cost Conference and of the Association of Casualty and Surety Executives?

A. The Bureau has supervision over the keeping of the accounts of both the named organizations.

Q. Does the Bureau see to the distribution or allocation of expenses among the members of the other organizations?

A. The Bureau does as respects both of those named organizations.

Q. Please say whether the Acquisition Cost Conference is a division or other subordinate of the Bureau?

[fol. 1190] A. It is not. It is a separate and distinct organization.

Q. And that is so of the Association?

A. That is so.

Q. Please state what companies are not in the Conference but are in the Bureau?

A. There are no companies that are in the Conference that are not in the Bureau. All Bureau members belong to the Conference.

Q. Please say what companies are in the Conference who are not in the Association?

A. The following companies are members of the Conference and not members of the Association: American Fidelity & Casualty Company, Guarantee Company of North America, Keystone Automobile Club, St. Paul-Mercury Indemnity Company.

Q. Have you made an examination to see what the aggregate casualty and surety premiums in Virginia of those four companies is?

A. I have.

Q. Will you state the amount?

A. The total Virginia premiums of those four companies amounted to $128,018.

Q. In what year?

A. In the calendar year 1937.

Q. Please say as to each line of insurance the largest amount of premiums in that line of any of those four companies?

A. Automobile Liability	$41,494
Liability, other than automobile	4,492
Workmen's Compensation	8,676

[fol. 1191]

Fidelity	4,394
Surety	1,820
Plate Glass	2,401
Burglary	1,470
Automobile Property Damage	11,097
Automobile Collision	545

Those are the major lines.

Q. Will you say what companies which are in the Association are not in the Bureau?

A. The following companies are members of the Association and not members of the National Bureau: American Credit Indemnity, Central Surety & Insurance Company, American Automobile, American Employers, Associated Indemnity, Car and General, Commercial Casualty, Continental Casualty, Employers Liability, General Accident, Fire

and Life, Home Indemnity, Indemnity Insurance Company of North America, Metropolitan Casualty, National Casualty, Seaboard Surety, Standard Surety and Casualty, United States Guarantee.

Q. Will you please state the total of premiums in casualty and surety lines of those companies in Virginia in the year 1937?

A. Those premiums amount to $1,356,389.

Q. Will you please state the premiums in each line of that one of those companies with the largest premiums in that line?

A. Accident	$45,739
Health	48,958
Automobile Liability	115,669

[fol. 1192]

Liability, other than automobile	$46,443
Workmen's Compensation	144,813
Fidelity	14,579
Surety	25,716
Plate Glass	7,154
Burglary	11,591
Boiler and Machinery	4,242
Automobile Property Damage	27,425
Automobile Collision	1,873

Q. Please state the names of the companies which are in the Association and not in the Conference?

A. American Credit Indemnity and Central Surety and Insurance Company.

Q. Will you please state the total Virginia premiums in 1937 of those companies?

A. $24,733.

Q. Will you please state the premiums in each line of one of those companies with the largest premiums in those lines?

A. Accident	$697
Automobile Liability	3,535
Fidelity	339
Surety	986
Plate Glass	4,259
Burglary	279

Q. Please state the name of reputable stock companies admitted to Virginia and not in the Conference, Association or Bureau, if you know those names?

[fol. 1193] A. The American Indemnity Company, the American Motorists, the American Policyholders, the Bituminous Casualty, Massachusetts Protective, Ohio Casualty, Penn Indemnity, Virginia Health and Accident and Virginia Surety.

Q. Will you please state the 1937 country-wide premiums of that group of companies and the Virginia premiums of that group of companies in the casualty and surety lines?

A. The total countrywide premium writings of the above named group of companies amount to $28,933,013. The Virginia premium writings of that same group of companies amount to $563,157.

Q. Will you now state the amount of premiums in each line of the one in that group of companies having the highest amount of Virginia premiums in each line?

A. The highest amount of Virginia writings for any one of the named companies are as follows:

Accident	$3,940
Accident and Health combined	171,641
Automobile Liability	82,538
Liability other than automobile	2,549
Workmen's Compensation	190,353
Fidelity	2,123
Surety	19,959
Plate Glass	3,108
Burglary	355
Automobile Property Damage	20,651
Automobile Collision	3,426

[fol. 1194] Q. In the absence of the Court having access to perhaps all of these figures, due in part to the Virginia Insurance Department not having made public the 1937 Virginia figures, please state on what reference books you base your statement?

A. All of the figures which I have testified to have been taken from exhibits published by the Spectator Company and furnished to their subscribers and which, in turn, are stated to have been abstracted from reports filed by each individual company with the Virginia Insurance Department.

Q. And the Court could compute this information itself by examining those Spectator books, couldn't it?

A. It could and they are stated to be taken from, and I have not found them at any time at variance with the re-

ports filed with each individual state insurance department.

Q. Those books that you used are public books in circulation throughout the business, aren't they?

A. They are.

Q. Refer please to stock companies not admitted to Virginia or, at least without Virginia coverage, and which are reputable companies and state their names and their premium data for 1937 in the same way you have stated the names and premium data for the other companies?

A. The following are, to the best of my knowledge and belief, reputable companies which are apparently not entered in Virginia: Citizens Casualty, Manufacturers Casualty, Preferred Accident, Yorkshire Indemnity, Commercial Standard, Connecticut Indemnity, Merchants Indemnity.

Q. What are the total premium writings of the Yorkshire Indemnity?

[fol. 1195] A. Country-wide premium writings are $870,892.

Q. The Preferred Accident?

A. $4,396,971.

Q. Manufacturers Casualty?

A. $3,324,241.

Q. Commercial Standard?

A. $2,900,971.

Q. Will you give the figure of the largest writing in each line of that one of that group of companies which has the largest writings in that line.

A.

Accident	$554,696
Health	49,219
Automobile Liability	2,489,885
Liability other than automobile	213,467
Workmen's Compensation	680,711
Fidelity	117,182
Surety	146,217
Plate Glass	57,603
Burglary	236,567
Automobile Property Damage	667,260
Automobile Collision	116,923

Q. Am I correct in my understanding that you have not attempted to speak at all about mutual insurance companies or reciprocal exchanges?

A. All of my testimony has related entirely to stock carriers.

Cross-examination.

By Mr. Staples:

[fol. 1196] Q. What is the National Bureau of Casualty and Surety Underwriters?

A. The National Bureau is a voluntary association of stock casualty and surety companies which functions as a rate-making and rate-administrating organization for its members insofar as it has powers.

Q. And what about the Association of Casualty and Surety Executives?

A. The Association of Casualty and Surety Executives, to the best of my knowledge, is an entirely separate voluntary organization of stock casualty and surety companies for the purposes of conservation, accident prevention, and the handling of current legislative problems and general policy problems of its members, and, to the best of my knowledge, has nothing to do with rates or rate-making.

Q. The Casualty and Surety Conference does what?

A. To the best of my knowledge, the Casualty and Surety Conference deals entirely with matters in control of acquisition cost.

Q. And the only one of these that fixes the ultimate rates, insofar as these rates are fixed, is what you have referred to as the National Bureau?

A. The National Bureau, to my knowledge, fixes no rates except recommends rates which are obligatory on its members unless there are state or other supervisory authorities who have the power to make or recommend rates for the various lines of business under its jurisdiction, which do not include all casualty lines and do not include any surety lines or workmen's compensation.

Q. The companies that are not in that have their rates fixed in what way or are they free-lances in that matter?

A. The companies who are not members of the National Bureau are, to the best of my knowledge, at liberty to write at any rates they cho-se, subject to the approval of any authorized state or federal authorities.

[fol. 1197] Q. Do you know whether they usually observe the rates or are they in the cut-rate business or how are they looked on in the business?

A. Some of them are cut-rate and some observe the rates. They adopt their policies as they see fit, subject to the state supervisory laws.

Q. And they pay any acquisition cost they see fit, I suppose?

A. That I do not know but I assume they do. I don't know anything about that.

Q. Are there any of the companies in this suit that are not members of the National Bureau?

A. Yes.

Q. Name them?

A. Accident & Casualty, American Automobile, Car & General, Central Surety, Continental Casualty Company, General Accident, Indemnity Insurance Company of North America, National Casualty, Seaboard Surety, Standard Surety & Casualty, United States Guarantee.

Q. Which of them are not members of the Association of Casualty and Surety Executives?

A. All of them are members of the Association.

Q. Which of them are not members of the Casualty and Surety Acquisition Cost Conference?

A. Central Surety is apparently not a member of the Acquisition Cost Conference.

Q. Does the Central Surety Company do business in New York State?

A. I do not believe it does.

Q. How many of those other companies that do not do business in Virginia do business in New York State?

[fol. 1198] A. I don't know what companies you are referring to.

Q. Didn't you read off a list of companies?

A. Sometime ago, you mean?

Q. Yes.

A. The companies that do not do business in Virginia?

Q. And do business in New York?

A. This is the list you refer to: Citizens Casualty does business in New York and does not do business in Virginia, the Manufacturers Casualty, Preferred Accident, Yorkshire Indemnity, Merchants Indemnity, Commercial Standard—and it does not do business in either New York or Virginia. I do not believe the Continental Indemnity does business in New York of those other companies that I have named.

Q. A New York broker couldn't very well write business here in a company that is not doing business in this state, could he?

A. I don't know. I don't think so.

Q. Are there any New York laws that control the competi-

tive rates or commissions that these companies that are not members of the Bureau charge?

A. New York regulations do exist respecting rates. That I know.

Q. Do they exist with respect to brokers' commissions?

A. That I do not know as I am connected only with a rate-making organization.

Q. What are your duties principally?

A. The regular duties of an actu-rial statistician which comprise the collection of casualty statistics on a uniform basis from the member companies of the National Bureau in such manner that they can be consolidated.

Q. In other words, you get the experience and loss ratio and information of that type upon which underwriting rates are based?

[fol. 1199] A. Well, I obtain such data as are deemed essential by the rating committees of the National Bureau to review and recommend adjustments of rates for the lines of business under the National Bureau's jurisdiction.

Q. What are the principal items of the data that you compile?

A. For the various lines of business under the jurisdiction of the National Bureau—exposures, losses, number of claims, excess portion of excess losses.

Q. What do you mean by data on exposures?

A. Exposures are the units subject to hazard for each line of business. For example, in automobile one car insured for one year constitutes one unit of exposure.

Q. Do you know the component elements that go into the different rates in the casualty lines?

A. I do.

Q. What are they in automobile liability insurance?

A. Two component elements are loss and expense.

Q. And do you know how they are subdivided or how the expense is subdivided?

A. I do not.

Q. Do you add anything for profit?

A. There is a loading of profit in certain rates, yes.

Q. How would the company expect to make any money if they didn't allow for profit?

A. From their experience that they would develop. I imagine that it is up to the company or companies or any organization to make rates. They would necessarily allow a factor for profit but in many instances the rates are not

[fol. 1200] made by any company or organization but are approved or, in some instances, made by state authority.

Q. What lines of coverage are there that they try to establish uniform rates in?

A. I should say all lines but various parties only are attempting to get uniform rates. You said "they". I don't know who you mean?

Q. I meant companies who are members of your Bureau. Is it the purpose of the Bureau to try to establish uniform rates in all of these lines of coverage in the casualty and surety companies?

A. That I do not know. As between Bureau members, yes, for the Bureau members themselves.

Q. Does it come within your knowledge as to the effect of some of these companies not having any rates which they agree to live up to, what effect that has on the business of the companies that do live up to the rates?

A. I should say the effect is detrimental.

Q. Detrimental to the company that cuts the rates or the one that doesn't cut them?

A. I think it is detrimental to every party concerned.

Q. Detrimental to both?

A. Detrimental to both.

Q. As a result of what you have just stated, it is necessarily true that the companies which are members of this Bureau are practically compelled to adopt the rate about as cheap as they can profitably operate on, isn't it? If they don't do that the companies that are not members of the Bureau can very easily undersell them at a profit to themselves? Is that true or not?

[fol. 1201] A. I should say that is true.

Gilbert L. Kerr, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Kerr, will you state your name and present occupation?

A. Gilbert L. Kerr, Superintendent of the Casualty Department of the Fidelity & Casualty Company of New York.

Q. Where is your office?

A. 80 Maiden Lane, New York.

Q. Will you please state what facilities, if any, other than the services of producing brokers and agents or local countersigning agents, casualty insurance companies have before or after covering fleet or single car automobile liability risks for gaining information as to the habits, record and standing of assureds, and employees of single car assureds?

A. There are reporting companies which furnish us information as to the habits, experience and general information regarding both individual and fleet risks. The companies also have engineering or inspection departments, payroll audit departments, and salaried representatives, sometimes called special agents, or field men. I don't know how much detail you wish me to go into. The reporting companies furnish us information concerning the driving records and driving ability of automobile risks, their traffic and accident records, if any, and their general suggestion as to their standing in the community. The engineering or inspection departments inspect and report on the physical aspects of the fleet risks and other types of insurable risks, compensation and liability.

[fol. 1202] Q. Do you make use of these outside facilities for inspections other than those in connection with automobile liability risks?

A. Yes, sir.

Q. What are the names of the leading companies with national organizations that do this work?

A. Retail Credit Company and Hooper-Holmes Bureau.

Q. Are you able to say whether they have personnel throughout the United States in the various states doing this inspection work?

A. Yes, sir.

Q. Will you please tell me whether these reports are sought prior to the companies going on the risk or periodically thereafter or in both ways?

A. In both ways.

Cross-examination.

By Mr. Staples:

Q. Why does the company get these reports?

A. In order to determine, as far as is possible, the acceptability of a given risk.

Q. Do they get these reports where the risk is written by a local agent, inside of the state as well as outside, to sort of check up on the agent?

A. They get the reports on risks written either inside or outside the state.

Q. In other words, whether the risk is written by a local man or whether it is written by a non-resident broker wouldn't affect the giving of the report?

[fol. 1203] A. No, sir, the report would be secured in either case.

Q. It is an independent check-up that the companies have from an impartial source, or supposedly so, to check not only against the local agent, if he recommends a risk, but also against the broker or any other person who may recommend a risk; is that true?

A. I don't like to comment on your statement, but it is an independent check-up, yes, through a source that we consider impartial and competent. The point that I am commenting on is your statement regarding the recommendation of the local agent. I don't know just exactly what you mean by that.

Q. Suppose a local agent recommends the driver of an automobile as a good safe man with a good record, you would not accept that as final but would also get this Retail Credit Company's report to see whether or not the agent knew what he was talking about or whether he has honestly disclosed what he thought about the situation, would you not?

A. We would get the report to check the acceptability of the risk to see if it was an acceptable risk to us.

Q. You don't know anything about how they get their information?

A. I know that they have sources of information. Perhaps I should say that they inform us that they have sources of information. They tell us that in certain points they have salaried investigators and other places they have what they term correspondents.

Q. You spoke also of availing yourself of the services of engineering and field men. Do you mean men employed by your company regularly or independent, outside engineering and field men?

A. Employed by our company regularly.

Q. You don't rely then on your engineering and inspec-
[fol. 1204] tion men or your claim men to give you informa-

tion of the type that you resort to the Retail Credit Company and the Hooper-Holmes Bureau for?

A. No, sir.

Q. What kind of reports do you desire from them after a risk has been accepted? Is it to determine whether you shall continue the risk?

A. Yes, sir, that is correct.

Q. I notice your accident and health report seems to be restricted to inquiry about one particular man. Is it not true that practically all accident and health business originates in the state in which the assured generally lives or resides and is not handled through non-resident brokers?

A. I can't say as to that. I don't know.

Q. What are your duties as Superintendent of the Casualty Department?

A. Supervision of the underwriting of all casualty lines except accident and health.

Q. What about burglary? Would you say that that is true of resident burglary insurance, that that originates in the home state of the assured as a general rule?

A. As a general rule, yes.

Q. Would you say that it was a common occurrence to have a burglary policy, where the assured has only one home, originate outside of the state of his residence?

A. I think it would not be common.

Q. What would you say on that question as to individual automobile policies?

A. I would say it was not uncommon. There are probably more instances of individual automobiles than there would [fol. 1205] be of residence burglary from my observation.

Q. Wouldn't that be almost confined to cases where a person has a home in another state and probably has an automobile down there as well as where he resides?

A. Possibly.

Q. What percentages of individual automobile policies would you say were handled through non-resident brokers?

A. I couldn't give an estimate. I have no idea.

Q. Wouldn't it be a very small per cent of the total?

A. I would think so, yes.

HALE ANDERSON, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you please state your position and where your office is situated, Mr. Anderson?

A. I am one of the Vice-Presidents of the Fidelity & Casualty Company and my office is at 80 Maiden Lane, New York City.

Q. In your position with what matters do you particularly have to do, that is to say, production or underwriting or legal matters or what?

A. I am in charge of the Company's underwriting.

Q. Please say what facilities, other than the services of producing brokers and agents or local countersigning agents, do fidelity and surety companies have for gaining information, either before or after covering fidelity risks, as to the habits, record and standing of bonded employees of their assureds?

[fol. 1206] A. In the first place, we insist upon receiving from every person to be bonded an application form giving very complete information as to that individual's history, present place in society, and particularly his former employments. Accompanying the application is a form which is filled out and signed by the employer, what we call the Employer's Statement, in which the employer gives details of the duties of the person to be bonded, the details as to how his operations are checked and supervised by the employer.

As I stated, the application calls for a wealth of information about the person to be bonded. Among other things, he gives the names of a number of references, people who know him and who he thinks will be willing to give information regarding his reputation and standing in the community. We write to each of those references, asking them many questions about the applicant.

As I have stated, the application must give a very complete list of the employee's past employments over a time of, in some cases, five years and, in most cases, ten years and he must state those former employments with the dates of employment, the name of the employer, the nature of the employment, the name of the individual under whom he

worked in the employer's job, and we write to each of those former employers, sending a questionnaire stating that the applicant says that he worked there at such and such a time under Mr. So and so and asking the former employer a great many questions about the applicant's record while with the former employer.

Occasionally we learn from a reference, or from a former employer, or otherwise, of an employment that the applicant has not himself listed. We hear of it, we will say, by chance. [fol. 1207] We write this form to that disclosed former employment that wasn't listed by the applicant.

We write this form to schools which the applicant attended where the applicant is so young that the ten-year period would carry him back into the school age.

As in the case of former employers, whom we learn of by chance, not listed in the applicant's application, we learn sometimes, not directly, of chance acquaintances. We learn that the applicant is known to Mr. Jones or Mr. Smith, although those gentlemen haven't been named by either the applicant or the former employer, and we have this form to make inquiry regarding the applicant from what I term a chance acquaintance or chance, so far as we are concerned. We just stumble upon the fact that someone else may know the applicant.

It is our practice annually to ask the employer to fill out this form, telling us how the applicant has behaved during the past year of his employment, have his accounts been examined and found correct, so far as the employer is able to determine, has the applicant been giving satisfactory service, are his personal habits, so far as the employer is able to determine, proper ones. In other words, this is an annual check-up on the employee as he continues in the employment.

All of that leads up to this consummation in the investigation. The references given by the applicant himself speak well of him perhaps. That is to be presumed, as he would hardly give many references who will be apt to speak ill of him, but it is surprising the number of cases in which even the reference given by the applicant himself will disclose information of a not altogether favorable nature or will give a clue to lines of inquiry that we can follow, but most important of all in the investigation is the complete verification of his history of past employment and we wouldn't [fol. 1208] bond the man unless we can verify and secure

favorable reports covering all of his time for the past five or perhaps ten years.

In addition to those forms of our own in that investigation, in the bonding department we also use the services that were referred to by Mr. Kerr, the special bond reports of the Retail Credit Company and of the Hooper-Holmes Bureau, they being familiar with our requirements and the nature of the information we need, and being quite expert in acquiring information of a fidelity nature.

Q. Having once gotten an inspection and report thereof, such as is covered by one of these forms, other than the employer's annual form, are you done with the matter or do you periodically, during the continuance of the renewal of the risk, procure these other re-reports, if I may use that word?

A. That depends upon the individual risk. If in our initial investigation we are not completely satisfied with all phases of the man's history, we do make periodic re-checks through the agencies described, in addition to the reports received from the employer. There are cases in which, everything being entirely satisfactory in the initial investigation, all of the reports from the employer annually being entirely satisfactory, we don't again order the Retail Credit or Hooper-Holmes reports.

Q. In your past experience leading to your occupying the office which you now do, have you had any quantity of contacts with producers and brokers and agents and with their assureds and their representatives?

A. Oh, yes, sir, I am constantly dealing with both assureds and with brokers and agents.

Q. Is it an ordinary part of your business to have to [fol. 1209] discuss things and negotiate things with both of those people and you see them together at times?

A. I see them both separately and together.

Q. I want you to say what would be, in your opinion, the reaction of a producer to a tender of services and recommendations or suggestions to his assured by local agents around the country in the localities of the coverage, whether he would welcome that or not welcome it, whether he would be thankful or unthankful, and so on?

A. The production of insurance—by production I mean the acquisition of insurance by an agent—is an extremely competitive business. Consequently in my experience I have found insurance agents very, very jealous of the risks that they control and of everything about them and

they are all the time greatly concerned for fear a competing agent will acquire any information about their risks which might enable the competing agent to take that risk away. Consequently, in my experience, I have found that an agent controlling the piece of business will go to almost any length to prevent another insurance agent from acquiring any information about or contact with his assured.

Q. Can you say whether the companies, from your experience, feel that for the protection of their interests that they may and properly should deal with their assureds through the producer of the business or whether they may efficiently, and with propriety, deal with their assureds through agents not the producers of the business but who, we will say, are countersigners or agents who, in addition to countersigning, put themselves forward under some state law but not at the desire of the producer, to perform other services in connection with the risk?

A. In my experience any company would consider it [fol. 1210] suicidal to give other than the producing agent any information about a risk or to deal in any way with an agent other than the producing agent in regard to a risk beyond that which is the minimum required by law under countersignature laws, or whatever they are. It is, to explain what I mean by the latter, necessary in some states that a policy be countersigned by an agent resident in that state. Of course, the company must comply with the law and place the policy at the disposal of some resident agent for countersignature purposes. It can't help going that far, but it would not for a moment voluntarily give other than the producing agent any additional information about the producing agent's business.

Q. Would you say that it would be beneficial to the loyalty of the producing agents of your company or destructive of their loyalty for the company to adopt another policy?

A. It would be utterly destructive. We would lose our producing agents if we permitted information about their business to get into the hands of other than the producer.

Q. In the absence of that feeling by the producers, you would feel it would be a good thing for you as a company to have these local countersigning agents around the country interest themselves in business produced by other agents and making suggestions to you or attempting to serve you with reference to it?

A. Before we get to whether or not we should like to

utilize such local agents' services, we would have to climb over an obstacle second to that of the producing agent and that would be the assured. The assured considers his business a highly confidential matter. He chooses the agent with whom he is willing to entrust those confidential matters. [fol. 1211] The assured would most certainly object to information that he had given in confidence to his chosen agent and his chosen company getting into the hands of someone that he had not selected and didn't know. If there were no objection whatever upon the part of the producing agent to having others come into the picture and if there were no objection whatever on the part of the assured (those are two ifs that create a purely academic situation because they are as real as anything there is in life) it is possible that in some few cases and in the case of some few exceptional local agents, they might be of service to the company. I can't answer accurately as to that because it simply isn't a practice that has ever been in vogue and I can only speculate on the degree of value that such local services might be.

Q. I would like to have a picture of what there is about an assured's business that he might not want to put into the hands of a countersigning agent, and I wish you would take a casualty risk first and illustrate it and then take a surety risk and put on the record some idea of the kind of things that it would be pertinent to you, as an underwriter of a casualty risk, to know that an assured wouldn't want put into the hands of any countersigning agent who happened along?

A. Take in the casualty field a workmen's compensation risk. An intelligent understanding and underwriting of a workmen's compensation risk involves a complete knowledge of all of the assured's operations in all of their details, what men do, what tools they use, what materials they use, how they use those tools and materials, how the operations in the plant are divided, how work progresses from one step to another, what the pay rolls are in the plant, how those pay rolls are divided into various classes, industrial hygiene surveys of the plant for the dangers that may create [fol. 1212] what are termed occupational diseases, chemists' tests of materials used and engineering inspection of all of the functions of the plant. The pay roll auditors have the complete run of the books of the assured. That information is all necessary for a comprehensive understanding of the risk. It would be intolerable from the employer's point

of view to have any but his own choice of both agent and company having access to all of that information.

Q. Would you say that a concern with factory locations or project locations in several states would have to communicate data from the several locations to its underwriter or producer in order to enable him to intelligently determine upon the exposures and extents of exposures that the concern had and the coverages and extents of coverages which it should have and the best kind of contracts adapted to its needs?

A. In my experience it is infinitely more desirable from the assured's point of view and from the company's point of view to have information regarding scattered units of a single risk come through a single source because thereby the assured is saved from the annoyance and possible risk of dealing with many different personalities and the company is assured of getting information of uniform quality as to all of the units.

Q. Can you say whether it is true or not that the cost to the assured may legitimately be lessened by considering his operations at all of his multiple locations over what that cost would have been if he had gone around piecemeal and had the policies written separately in each location?

A. It is rather difficult to answer that question in a manner that would cover all cases and all circumstances. In a great many cases it would make no difference in the assured's ultimate premium as to whether he placed the risk [fol. 1213] in a number of separate units or whether he placed it all as one unit but there are other cases in which it would make a difference. For example, take the fidelity and surety field. A given large corporation may own numerous subsidiaries. If it insured each one of those separately, each subsidiary would take the rate applicable to the volume of business of that subsidiary, whereas if it insured the operations of the entire organization, the entire organization would get the benefit of the somewhat lower rate applicable to the larger amount of total insurance. Similarly, if automobiles are insured separately they may take individual car rates, whereas if insured as part of a fleet they would take the fleet discount.

Q. What are the things of a private nature that a contractor who is going to give a bond might be willing to tell the bonding company or to his chosen producer, and what

are some of those things that he might not want to tell to an agent in every county that he happened to be doing some work in?

A. A bonding company in writing a contract bond, is primarily interested in the adequacy of the contractor's price for the work. That is made up of various units of cost as to material. A contractor is very jealous of the prices he has been able to get for cement, steel, or whatever it is. He wouldn't tolerate for a moment information as to the prices he had been able to secure for those materials getting into hands other than of the ones he chose to handle the transaction.

Q. Is it necessary in cases like that, in order to do underwriting properly, that the underwriter should know the volume of work to be performed by the contractor and to have information as to the practicability of his doing that work, the price at which he has assumed to do it and the security [fol. 1214] he may have for the performance of his obligation? Is it necessary for the underwriter to know what suits are pending against the contractor for alleged past breaches of contracts and to have the contractor's full financial statement, and to not only have him say he has assets of so much and liabilities of so much but to know of what the assets consist and how collectible they are, and so on?

A. Every bit of that information is essential to properly underwriting a contract bond.

Q. If I were a local agent and were offering my assistance in my capacity as a local agent, both to the company and the producer in underwriting that bond, if I couldn't get any of that information would my services be substantial, in your opinion?

A. I can't imagine any way in which the local agent would be of any use whatever, either to the contractor or the company.

Cross-examination.

By Mr. Staples:

Q. Mr. Anderson, what are your principal duties with the Fidelity & Casualty Company?

A. I am in charge of underwriting. In that work I simply confer with and supervise the activities of the various underwriting divisions of the company. I constantly confer with and reach decisions with agents of the company from all over the country, both by personal calls and by

correspondence, and I am also frequently in conference with the company's assureds as to acceptability of business and the terms under which it will be accepted, as distinguished from the actual sales and claim payment activities of the company.

[fol. 1215] Q. Why do you get in touch with the local agents all over the country?

A. A great many of them come to New York and they invariably call upon me to discuss their problems when they do. I occasionally make trips around the country, in which case I call upon them to discuss their problems.

Q. What problems do they have that you discuss with them that come within the general scope of your duties?

A. Broadly speaking, what sort of business will the company accept and under what circumstances, and what sort of business will we not accept and why.

Q. Do you try to get information from the agents as to the general facts and underlying circumstances, attending a risk that you are considering underwriting?

A. All of our business is handled primarily by means of forms that are designed to bring out all needed information for underwriting and that information is supplemented and confirmed by various methods of investigation that we carry on, such as these reports of which I speak. To the extent that the agent is instrumental in having these forms completed, the agent is instrumental in giving us information about the risk. Furthermore, frequently the agent in submitting the risk to us gives us his personal opinion of the risk. I hope I have answered your question. I don't know that I understand precisely its scope.

Q. Isn't it frequently true that in going over these various forms you run into questions which would raise a doubt in your mind as to the desirability of the risk and you refer the matter to the agent to see if he can clear it up and give you additional information which will remove that doubt?

A. If an agent sends us in papers which are incomplete [fol. 1216] or which contain ambiguities or which leave us in doubt as to certain points, we do write to the agent who submits the business and ask for further information on the point in question.

Q. I had reference more to doubts which arose from these reports that you get from sources other than agents, such as the people you write to inquire about a man or his habits or his former employers or something of that kind. Would

you write to an agent to find out whether, in his opinion, if a bad report was given on a man, it was due to ill feeling or would you give him a chance to clear up the doubt that arose or to make further investigation into the facts?

A. I should say, generally speaking, we almost never do that, no. We clear up the point through collateral investigation. The average agent hasn't an intimate knowledge of the risk.

Q. He might know though whether or not a person that gave you information was friendly to the assured or whether he had any personal hostility or something of that kind, might he not?

A. We have much more effective ways of detecting prejudiced information.

Q. How do you do it?

A. We send our salaried representatives who are trained in such matters to interview the one who gave the unfavorable information.

Q. So if you thought the risk undesirable you would turn it down without giving the producing agent an opportunity to clear up your difficulties or your doubts, or whatever reason you might have for rejecting it?

A. Yes, we would.

[fol. 1217] Q. It doesn't strike me that is very fair to the agent. It does look like he ought to be given an opportunity to be heard in the matter before you reject his business.

A. We have been discussing, in the last few minutes, the investigation of an applicant for a bond. The local agent simply is not equipped to reach a sound decision on a point of that kind because it almost invariably involves an attempted concealment of a past employment that reflected discredit on the applicant. The agent, in the first place, is not skilled in uncovering such deception. He wouldn't have a Chinaman's chance of being useful in the matter and he probably would succeed in only befogging the issue.

Q. Might it not be true that instead of trying to conceal a discreditable performance, it might be that he had had a very unpleasant personal relationship with his former employer and didn't care about having you get a report from him for that reason because he thought it would be bias-- or prejudiced?

A. I may say that in our fidelity underwriting we never decline an applicant because of an unfavorable report from a single source. We always, before making an unfavorable

decision in such a case, recognizing our great responsibility to the applicant, insist upon confirmation, direct or collateral, of the unfavorable information. We are very keenly alive to the fact that human nature is what it is and people do bear grudges and sometimes unjustly speak ill of a person.

Q. And you don't think that your agents are competent to find out about those things?

A. Broadly speaking, I am sure they are not. It takes one [fol. 1218] with long experience in handling such investigations to properly evaluate information.

Q. Who do these credit companies employ to do that?

A. I only know about their practices from the publicity they put out, the magazines and house organs they issue and whatnot. Those house organs show that they have many thousands of salaried employees all over the country engaged in nothing but making these investigations.

Q. So you would place confidence in somebody you didn't know who was making the report, rather than on your own agent?

A. I would phrase it somewhat differently. I place confidence in one who is trained in a given technical field above information given by one whose activities in life are wholly foreign to that field.

Q. Young lawyers are certainly not trained in that field and when I first started out practicing law I made many reports for the Retail Credit Company on matters of that kind. I suppose they probably still follow that practice, although I do not know.

A. That may be but you must remember that we don't ask these reporting agencies for conclusions. We ask them for facts. If they say, "We talked to Mr. Jones, the grocer, and he says, 'I have carried the account of Bill Smith for the past two years and I have to put a stick of dynamite under him every week in order to get the money out of him,' " that is a fact. That isn't a conclusion. We can draw the conclusions on that.

Q. Does your form call for a report from the grocer?

A. I am speaking of these report forms. The reporting agency may interview the corner grocer. If it does it tells us the result of the interview.

[fol. 1219] Q. I never saw anything like that on the forms I used to get. They were largely matters of opinion as to a

man's whiskey drinking habits or general reputation for honesty and things of that kind.

A. On these reports you will find a large space for remarks and sometimes running over on the back for the purpose of inserting factual information they acquired and from whom they acquired it.

Q. You don't know the man's name who investigates it?

A. I don't know, no.

Q. Or how reliable his report would be?

A. Other than experience over a long term of years that we have had with these reporting agencies.

Q. You don't think that the local resident agent would be able to interview the grocer and find out whether the man paid his bills?

A. In the first place he wouldn't do it because he wouldn't be bothered with it and, in the second place, he is not, as I say, a trained investigator; he is an insurance salesman.

Q. It wouldn't take a trained investigator to ask a grocer whether a man pays his bills?

A. It takes a trained investigator to do that work without raising a row, yes, because you have got to be very discreet and careful and circumspect and experienced in doing that work or you will have a tempest about your ears.

Q. Aren't these insurance agents usually pretty adroit and tactful sort of people? They have to be that way to get along in the insurance business, don't they?

A. They are very tactful and adroit in their business, [fol. 1220] which is selling insurance. I don't think that they are trained investigators—in my experience, of course, and subject, naturally, to exceptions.

Q. Have you ever had any agent in Virginia to make an unwelcomed tender of service to one of your assureds?

A. I don't recall any.

Q. Have you ever had any in any other states?

A. I wonder if I understand fully what you mean by an unwelcomed tender of assistance.

Q. Services?

A. We have frequently—I say frequently—occasions on which we hear of an agent, other than the agent who controls the business, approaching the assured, his object undoubtedly being to get acquainted with the assured and learn about the assured's business and ultimately to secure the assured's business.

Q. He is engaged in soliciting the business, isn't he?

A. I presume you would gather it together under that head, yes.

Q. And, of course, I suppose an insurance agent sometimes does ask questions when he is soliciting business that may not be very tactful and maybe the assured doesn't want to answer them. That is probably true, isn't it?

A. I have no doubt it is.

Q. But I think that is on an entirely different basis.

A. Perhaps I didn't understand your question.

Q. An agent who is presumably getting half of the commissions for the work and the contract has already been written and he is offering to be of service to the assured in any way that he can during the life of the contract, has [fol. 1221] no ax to grind by going there except to make himself useful and help the broker, we will say, who negotiated the contract.

A. In my experience all agents are very much alive to what I described at the beginning of your questions, to the fact that every agent is tremendously jealous of his business and won't tolerate any interference in it by another agent, and wishing to do as they are done by, I don't think that any but the producing agent is at all apt to approach the assured.

Q. That is because you think there would be a feeling on the part of the producing agent or broker in New York that the local Virginia agent would try to undermine him or take the business away from him, isn't it?

A. I think it is due to the fact that insurance agents generally recognize that they must not trespass on preserves that belong to others except by legitimate means and that it wouldn't be legitimate means to get acquainted with the assured of another agent by the instrumentality of offering to be of service.

Q. I say why is that so? Why is it that they don't like it? Why is it the New York broker doesn't want the Virginia agent to contact his assured?

A. I suppose for the same reason that if you were selling shoes you wouldn't like a rival salesman from some other shoe company calling on your customers. It seems evident to me why they don't like it.

Q. You think it is because he would regard the Virginia agent as a competitor of his; is that true?

A. I think every insurance agent is a potential competitor of every other.

Q. If the Virginia agent recognizes the broker's right to [fol. 1222] the business and is really trying to help the broker retain the business on his books and, if it is renewed, recognizes that the renewal is just as much for the benefit of the broker as it is for the agent, why should he object to that?

A. Why should the broker object to it?

Q. Yes.

A. Well, I think the broker's answer would be, "If I want assistance I will ask for it and I do not want you to give it until I tell you I want it."

Q. You are assuming he does object. Why should he object?

A. Well, I don't know that I am competent to answer what goes through a broker's mind. I am not a broker and I am not an agent. From my conversations with them, I believe they take the broad general stand that the less any other agent has to do with their business the less chance there is of some other agent taking the business away from them.

Q. But they do associate local agents with them very frequently, don't they?

A. I shouldn't say frequently done, no. I have heard of cases where a broker enlisted the services of a local agent where he feels it necessary to do so in order to handle the business but I shouldn't say it is frequently done.

Q. No, I asked you whether or not, in your opinion, the brokers up here were afraid to trust that firm or thought that they would undermine them?

A. I say that in my experience and from my conversations with agents and brokers I gathered the impression that they wish to have other agents and brokers have as little as possible to do with their risks.

[fol. 1223] Q. Have you found that brokers were unwilling for their associates in other states where they did associate local agents with them to be provided with such information as would help them service the risks?

A. If a broker handling a piece of business chooses to utilize the services of a local agent for a given purpose, he, of course, furnishes that local agent with information that will enable the local agent to perform the service that the broker is asking for.

Q. It would seem quite obvious that the broker can't expect the local agent to render the service customarily rendered by a local agent without that agent having the neces-

sary information on which to base his actions and in those cases where there have been a voluntary association and the broker felt that the local agent would respect his rights, you haven't found any unwillingness to supply the local agent with that information which is necessary, have you?

A. In my experience the broker utilizes the services of the resident agent only when and to that degree that it is necessary and he supplies the local agent with only that degree of information that is necessary for the performance of the necessary services, so that I hardly think the term "willingness" is proper. It is necessary. Willingness suggests complete acquiescence, voluntary action. Necessity suggests "I have to do it."

Q. You don't think that these New York brokers would like the idea of being compelled to associate a local agent with them, do you?

A. In my opinion they would not like it, no, sir.

Q. To get back to the original question, what agent have you ever known of to persist in securing information from an assured against his will or an assured that did not want [fol. 1224] to give it where an agent had already written the business or where he was associated with a broker who had written the business?

A. If a broker who is chosen by the assured to handle the assured's business enlists the aid of a local agent, he does so only with the knowledge and consent and acquiescence of the assured. He wouldn't send a stranger into the assured to ask any questions because the assured would most certainly refuse to answer the questions and not recognize the man had any right to ask them. Consequently, if, as I say, the broker enlists the aid of a local agent, that is done with the consent and acquiescence of the assured and if that assisting local agent goes to the assured's local plant and asks some questions, the assured undoubtedly would give the information to that collaborator of the broker as he would to the broker himself. So in such case I can't think of any instance where such information has been denied.

Q. You never have known any case of that kind, have you?

A. Where a broker has enlisted the aid of a local agent?

Q. And the local agent has made himself obnoxious to the assured?

A. No, I don't think of any case. It doesn't mean there aren't any. I just don't think of any.

Q. When you undertook to testify about what the reaction of an assured would be to an agent volunteering services, you were not speaking from experience at all, were you, but merely from imagination and theory?

A. Not at all.

Q. You never knew of any other agent to do it and never heard of it, so you said; is that true?

A. I don't recall at the present time ever having an assured complain to me that one of our agents has sought information from him and been denied that information.

[fol. 1225] Q. You say that these brokers don't associate any agent with them except some agent that they have already consulted the assured about. How do you know that?

A. I say that that is my opinion of the way in which the brokers handle such transactions. I am not a broker.

Q. As a matter of fact, a broker this morning testified about a trip that he took down to Kentucky, I believe it was, looking for an agent with knowledge along a specialized line and he didn't say anything about having consulted the assured and the only result of his trip was that he found no agent down there who was qualified to handle this particular type of risk. That would indicate that probably the broker doesn't necessarily consult the assureds about the agent he gets, wouldn't it?

A. But aren't you confident that if the broker had found the kind of an agent he was looking for and was going to send that agent in to deal with the assured, before he sent the agent in to deal with the assured he would ascertain that that agent would be well received by the assured and not walk in there as a stranger?

Q. I would think so.

A. That is really all I testified to.

Q. I see no reason why that practice shouldn't be followed in Virginia under this new law if the brokers want to take the trouble to do it and continue a successful cooperative basis in the spirit in which the agents of Virginia have indicated that they will accept it as shown from the testimony in this case?

A. Or provided the assured is willing to have a third party come into the transaction.

[fol. 1226] Q. Of course, if the assured does not desire

contact with the agent, I don't suppose the agent will force himself on him. I wouldn't think so. Would you?

A. I certainly wouldn't. It would be most unwise to try to crash an assured's gate if the assured didn't want me in.

Q. You have no reason to think that any competent insurance agent would do a thing of that kind, have you?

A. It isn't my function to object to your question but, really, is that a proper question to ask one in my position? What do I know about agents, or what goes on in their minds and what some agent will do and what another one won't do?

Q. You were saying awhile ago what you thought these assureds would think about a thing like that. If you know what goes on in the mind of the assured, it seems to me you would know just as well what goes on in the mind of an agent.

A. Well, to answer your question, no, I don't see any reason why an agent should do that.

Q. These New York brokers up here frequently, or sometimes at least, change their risks from one company to another for one reason or another, don't they?

A. Yes, they do.

Q. And they feel that they are the owners of that business and I believe the insurance companies also recognize that same ownership, don't they?

A. The broker is the representative of the insured. So in dealing with a broker you are dealing with the assured.

[fol. 1227] Q. The Courts seem to hold a little differently from that on some points but that is not necessary to go into here. The broker feels that he should be regarded by the company as the owner of that business and that the company should not undertake to exercise any influence on the assured to prevent him from transferring that business to another company if he so desires. Isn't that true?

A. You are using pretty broad terms. You say the company recognizes the broker as the owner of the business?

Q. So far as the company is concerned.

A. I don't know just what you mean by the owner of the business. I can say, if this is the answer that you are looking for, a company deals with the assured on a brokered risk only through the broker and would not consider it proper practice to go direct to the assured over the broker's head or behind the broker's back in order to try to persuade the assured to stay with the company when the broker is

trying to take the risk to some other company. I think that is an answer to your question.

Q. Yes, that answers my question. In the testimony taken a few days ago at Richmond in which the engineer of either your company or one of the others—I don't recall which—was on the stand (I believe it was probably the Travelers Company), he stated that it was customary, certainly for him, and I understood you to say it was customary in the inspection and engineering departments of the companies generally which have those departments in Virginia, to immediately contact the assured without permission of the broker or producing agent, or to contact the assured's representative, and go in there and get all sorts of information as to the manner in which a plant is being operated or a fleet of trucks is being operated and that he did not consider that [fol. 1228] he was trespassing upon the broker's rights in the matter at all. Is that in conflict with what you have just stated, that the company does not contact the assured except through the broker?

A. No, it is not in conflict at all. They are two very different functions. Performing engineering service for the risk is something that the broker is not interested in at all except to see that proper engineering service is rendered. It has nothing to do with solicitation of the business or keeping it from going from one company to another. A broker has no objection whatever, in my experience, to having the engineers call and service the plant engineering-wise without the broker's presence or specific permission. It is taken as a matter of course. It is all part of the way the business is handled. A broker not only acquiesces in it but he wishes it done that way. He can't run around every time an engineer is going to inspect a boiler or turbine, or something of that sort, and be present. He would serve no useful purpose and add nothing to the value of the inspection.

Q. But this engineer was talking about conferring with the Superintendent at the plant or the head of the state branch of a manufacturing plant, or something of that kind, with a view to inducing the company to spend some money in improvements so as to reduce losses and also holding meetings, with the employees, safety meetings, and instructing the drivers, and various types of service.

A. Certainly, that is all part of engineering service, what

the brokers not only expect but demand. It is the proper handling of an insurance risk.

Q. It was also testified that one of the main reasons that companies did that was to make themselves valuable to the [fol. 1229] assureds so that the assured would desire to continue that company on that risk. Is that true or not?

A. Of course it is true. It is all a part of intelligent insurance.

Q. Then wouldn't that be calculated to prevent the broker from being able to take it away from that company if the service rendered was so satisfactory that the assured would feel that he would desire to keep that company?

A. It is operating an insurance business in an intelligent manner.

Q. I understand that but I say would it have that effect?

A. Naturally, any assured wants to deal with an efficient insurance company, not one that doesn't know its business.

Q. So that it would have the effect of preventing the broker from absolutely being able to take that business away from the company, wouldn't it?

A. No, it wouldn't have the effect of preventing the broker from doing it because there are many companies in the business whose engineering services are comparable with one another and he has the choice of perhaps half a dozen. One is just as efficient and careful as another and he has a free choice between them.

Q. That would depend to some extent upon the type of inspection and engineering service they might have in Virginia, wouldn't it?

A. Companies who are well organized have uniform service throughout the country in all the states where they pretend to operate.

Q. Doesn't the efficiency of the service and the skill of the people conducting that service in a state depend to quite a large extent upon the volume of business which the casualty company has there and the amount of money it can afford to spend to keep that up in proportion to the volume of business it does?

[fol. 1230] A. I shouldn't say the service varied materially in quality with the volume of business done in the state because we insist upon having our inspectors of a minimum grade of intelligence, experience and expertness and if we have a large volume of business in a given state

we simply have more of those inspectors. If we have a small business we have fewer inspectors but each of those is able to render just as satisfactory service as any unit in the larger states.

Q. It was claimed by one of the witnesses at Richmond that the Travelers has a very superior service and better paid men in Virginia than any other company. This was a Travelers agent, however, who made that statement.

A. I would expect the Travelers to say their service was better.

Q. This agent also, I believe, represented one or two other companies, if not your company, also. I am not sure about that.

A. Anyway, you don't expect to get me in a fight with somebody who testified down in Richmond last week, do you?

Q. How many engineers do you call a corps?

A. Well, we have varying numbers of engineers in various territory. It altogether depends on the needs of the territory.

Q. How many do you have in Virginia?

A. I don't know offhand without consulting the records. Engineering service follows volume of business more than it does straight state lines. In other words, it is conceivable that an engineer whose office and desk is in Washington, D. C., might service northern Virginia. An engineer whose office and desk is in some place in North Carolina might service some points in southern Virginia. So it would be [fol. 1231] very difficult to say how many engineers we have in Virginia.

Q. It might be like the broker who was on the stand this morning. He has one engineer who services the whole United States. That is doing pretty well, isn't it?

A. I never heard of an engineer attempting to cover such a territory.

Q. Is there any reason that you know of why, if the local Virginia agent respects the rights of the broker to the business which the broker produces to the same extent that your company does, that resident agent should not make such contact with the representatives of the assured in Virginia as is necessary to enable him to render the service which a resident agent usually renders, on the same theory that your engineering force feels that it has the right to

contact the assured in order to render the service which it is supposed to render?

A. If the broker has no objection to having the local agent interest himself in the broker's risk in Virginia and if the assured has no objection to having that local agent function in connection with that risk, we would, as a company, have no objection to his functioning if he could be of any service to the assured or the broker or to us.

Q. Would your engineering department fail to contact the assured because the broker thought your company was possibly trying to make itself too solid with the assured or what would be the attitude of your company in a case of that kind?

A. We always insist upon properly engineering a risk and if the broker refuses to let us engineer a risk in a manner that we consider necessary for a proper handling of the business, we ask the broker to take the business somewhere else.

[fol. 1232] Q. Then you refuse to keep the business at all unless you are not prevented, so to speak, from contacting the assured?

A. Unless we are permitted properly to engineer the risk. If the broker wants to go along with our engineer, we have no objection to his going but the broker naturally doesn't want to trot around that way because he performs no useful function, standing around on one foot and then the other while the engineer crawls into a furnace or puts a magnetic flux test on a turbine or something of that sort. He doesn't want to waste his time.

Q. He might be a little help in some of these safety meetings, mightn't he?

A. He might and if he is interested he is welcome to be there and Heaven knows we would never take any steps to prevent his being there. If he wants to know when safety meetings are going to be held, we will gladly tell him.

Q. Did you ever hear of one of them going to a safety meeting?

A. I have no doubt they frequently do.

Q. Do you know of any case in which one ever went?

A. I don't run safety meetings. I don't think I have ever been out to a plant to attend a safety meeting, so I couldn't say in this case the broker was there and in the other case he wasn't. I have no doubt, inasmuch as they are intelligent men and very much interested in all phases of the

business, that they not infrequently do attend those meetings to see whether the company knows its business in conducting such meetings.

Q. Would you say that a broker who didn't attend the safety meetings would not be properly servicing the risk?

A. I wouldn't say that.

[fol. 1233] Q. I understood from the testimony of the engineer that they didn't wait to get the consent of the broker to contact the assured but did it immediately on receiving one of these forms that Mr. Christian filed as an exhibit down there which was supposed to be, in effect an order to them to go ahead and do that inspection?

A. I don't understand the Attorney General is asking me any question. He made some declaratory statement about what had been testified.

Q. Is that your understanding of the situation?

A. It is my understanding that when a broker places a risk that normally requires engineering service for proper and intelligent handling, he expects the company to proceed immediately with that engineering service without any specific order from or permission from the broker. It is understood to be normal procedure for the company to proceed immediately with engineering service.

Q. As a matter of fact, did you ever hear of a broker objecting to it?

A. Objecting to a proper engineering service?

Q. Yes, to the engineering department contacting the assured or any of its representatives?

A. I don't recall ever having heard of such an objection but if it were registered it would probably be registered with the engineering department, not with the underwriting department, and would be straightened out between the broker and the engineering department.

Q. You spoke of a single risk and I understood you to use that term in the sense of a risk covering different units or plants of a large corporation situated in different states, perhaps a half dozen different states. Did you mean to use the words "single risk" in that sense or did I misunderstand you?

[fol. 1234] A. Ordinarily a single risk means a given policy. That policy might cover one plant in one location or it might conceivably cover fifty plants in fifty locations. It would still be a single risk.

Q. That was the point I was getting at, whether you

meant by a single risk any necessary connection between the plants or whether you just referred to the policy which was written covering all of these various risks? You were referring to the premium which would be applicable to a single risk of that kind.

A. In reply to Mr. Christian's question, or perhaps yours, as to whether it made any difference in the premium paid by the assured if he dealt on one unit of the risk or if he swept them all together in a broker's hands to cover the whole country.

Q. Yes, something along that line.

A. As I recall my answer to that question, I said it couldn't be answered in sweeping terms because there were [fol. 1235] occasions in which there would be a difference in rate in that a given unit of business of moderate size might take a higher rate than that same unit would take were it part of a larger aggregate of business.

Q. But where they are completely disconnected in their operations, there is no reason why a separate policy shouldn't just as well be written as one policy, is there?

A. If I understand your question, we will say that there is a small plant in Virginia. It would make no difference in the rate for that plant, that plant having no connection with any other plant, whether the risk were written through a Virginia agent or through a New York broker.

Q. You mean if it were written as an isolated risk?

A. As an isolated risk.

Q. If it is combined with risks in other states——

A. That might make a difference in premium in some classes of insurance and under some circumstances.

Q. So that the net result would be that if there was a chain store, we will say, that had a certain number of stores in Virginia and had them scattered all over the United States, they get cheaper insurance than an individual store in one of those states would get by reason of what you call interstate rating or something of that kind that was applicable to a situation covering a larger volume of premiums?

A. That might be true. I tried to make it clear that you can't answer the question generally because it is subject to all sorts of qualifications. An individual grocery store in Virginia, we will say, takes a given rate. That would be the rate applicable to that store, no matter who placed the business as an agent or broker. However, if that store were

[fol. 1236] part of a nation-wide chain, that whole nation-wide chain might be entitled to an experience rate based on the experience of the country-wide operation, in which case, although the experience on that particular Virginia store might be bad and justified, for that particular store if written individually, a higher rate, the experience of the entire chain might entitle that store to the overall rate which would be lower than the store could get individually. You can't answer a question without qualifications and running into all of the ramifications of the various lines of business.

Q. Is that the only difference, the experience rating?

A. I mentioned automobile fleet rates as distinguished from single car rates.

Q. Let us confine ourselves to the chain grocery now. Is the only difference in the interstate rate the application of the experience that you spoke of to influence the rate? Is that the only consideration that influences an interstate rate covering a large number of stores located in different states?

A. No, that isn't the only difference. A rate for a fidelity bond, we will say, is one-half of one percent, fifty cents a hundred. A single grocery store down in Virginia, if it wanted to bond three or four clerks, would have to pay that rate. However, if it were part of a nation-wide chain of grocery stores, producing a volume of fidelity insurance in toto of $5,000,000, it might get a rate as low as thirty cents or twenty-five cents on volume.

Q. In other words, it enables a chain store to buy its insurance or surety, or whatever you call it, at a cheaper rate than the individual would be able to buy it on account of that large volume you just spoke of?

[fol. 1237] A. The same way that you could probably buy a bag of cement for eighty cents if you buy a million bags, whereas you have to pay a dollar if you go down to your local building supply house and buy one bag and have them bring it up for you.

Q. That was the point I was getting at. It does give these large chain stores an advantage over an individual operator?

A. I suppose volume buying always has its advantage.

Q. That is one of the main advantages these chain stores are supposed to have and the point I was trying to bring out was whether that applied to their insurance the same as it does to their other matters and I believe you say that it does?

A. I have explained circumstances in which it does make a difference. There may be others in which it doesn't make any difference. I have tried to make it clear that your question can't be answered in such a manner as to cover the whole field of insurance.

Q. You said you couldn't imagine any way in which a local agent could be helpful to a contractor who wanted a bond to secure the performance of his contract, I believe, didn't you?

A. No, not exactly that. As I recall it, Mr. Christian said the contractor secured a contract down in Virginia and filed a bond and has gone down there and started to work and he wanted to know if there was any way that the local agent could be of service to him in performing that work and I said I couldn't think of any way in which he could be.

Q. One of the witnesses, Mr. Boswell, I believe it was, testified that he believed that he rendered quite an effective service to his clients of that type, particularly those who [fol. 1238] come into Virginia from outside the state, by providing them with information as to subcontractors and their efficiency and reliability and responsibility, and matters of that kind, which would be helpful to them in carrying on their contracts. Do you agree with that, that that is one of the services that an agent might render?

A. If I were a contractor I don't think I would seek credit information about subcontractors through insurance agents, and I don't think that the large contracting concerns doing an interstate business, with which I am familiar, seek their credit information from such sources.

Q. You might seek it if you had confidence in the agent and he had devoted a great deal of time on that subject so as to be able to furnish you with the information?

A. If I thought he was a widely informed and well thought of man I might seek his counsel, not as an insurance agent but simply as a widely informed man, just as I might ask a doctor the same information if the doctor happened to know the man I was planning to hire.

Q. You think you are pretty well qualified to say what is going on in the minds of these contractors, although you didn't seem to think you could do that as to agents a while ago?

A. I said that if I were a contractor I would not seek credit information, I don't think, from insurance agents, that is, credit information about subcontractors.

Q. How do you know what you would do if you were a contractor?

A. Well, one has a general idea of the way he conducts his life and the way he does business.

Q. And you don't think that an insurance agent who made [fol. 1239] a speciality of informing himself about those things could give any helpful information?

A. I didn't say that at all. I have no doubt that he could give helpful information. I don't think that he is usually sought out by an out-of-state contractor as a source of credit information about subcontractors. I think the contractors usually deal through their associations and their reporting agencies and their credit agencies that they maintain and the Bureau of Contract Information in Washington that they support for information about contractors. I don't think that they generally seek that information from insurance agents.

Q. I suppose you probably have in mind very much larger types of confracts than we have in Virginia. They are usually not so very large, probably $100,000 or $200,000 or something along that line. I don't suppose that this agent would undertake to inform a man who has a ten million dollar contract about subcontractors all over the country but these were aids that he said he was giving with reference to business in Virginia.

A. I, of course, don't presume to contradict Mr. Boswell, or whatever his name is, as to what he has been doing. I don't know anything about what he has been doing.

Q. You don't know anything about whether agents render that type of service or not?

A. I don't know of any contractor clients of ours who seek information about material men and subcontractors, as a practice, from insurance agents. There may be such clients of ours who do that but I don't know that they do.

Q. You don't know how they get their information, do you, except as a sort of guess?

[fol. 1240] A. I know that they maintain, at considerable expense, the Bureau of Contract Information in Washington which is engaged in gathering the performance records of contractors of all types and sizes all over the United States. I presume, in that they are spending a great many thousands of dollars a year in maintaining that Bureau for the purpose of knowing about the capacity and responsibility of contractors, that they use it.

Q. You are speaking of these large contractors?

A. I am speaking of contractors, large, small and middling.

Q. Do all of them belong to that association?

A. Not all of them, no. I know that contracting organizations in localities, sometimes rather restricted localities and sometimes rather wide spread localities, maintain credit associations for the sole purpose of gathering data regarding subcontractors, material houses and others. Those are expensive organizations and I presume they use them.

Q. You really don't know anything about it, do you?

A. No, I don't know anything about it except I am sure people do buy goods in stores that continue to exist and I presume if a contracting organization supports a credit organization it uses it. Perhaps it is a fanciful supposition.

Q. Do you dispute the fact that that is a valuable service which these agents render, or not?

A. I think any information is valuable if it is sound information, whether it comes from a doctor or a lawyer or a merchant or a thief.

Q. Do you think that a local man would probably know more about the capacities of these local contractors than a Bureau in Washington or is it your idea that the Bureau in Washington would know more about it, just like you think [fol. 1241] the broker in New York knows more about what is going on in Virginia than the local agent, or apparently you think so.

A. I never said that a broker in New York knew more about what is going on in Virginia than a local man. The Bureau in Washington doesn't state conclusions; it gathers facts. It is able to give to a contractor, who is interested in hiring a given subcontractor, the facts that he has performed this list of contracts, that the architects in each one said that the work was satisfactorily performed, that the material men in each case said the subcontractor paid his bills promptly or discounted them or was thirty days or ninety days late or had to be sued. The Bureau doesn't pretend to give any opinion. It gives facts.

Q. If the contractor wants an opinion he would probably get it from the local agent there as to which one would probably give him the most efficient service, wouldn't he?

A. If he had contact with a local agent and valued that man's opinion, I presume he would consult him. I don't know.

Mr. Christian: As a supplement to Plaintiffs' Exhibit 3 in this case and Plaintiffs' Exhibit 3(a), I file a copy of a bulletin that Mr. Walter Bennett sent out to the members of the National Association of Insurance Agents under date of November 3, 1937, and a copy of the agency agreement of Fidelity & Casualty Company of New York, with interlineations showing the way that agency agreement would read as the company agreed with Mr. Bennett that the agreement should be construed. I will ask the Reporter to identify these as Plaintiffs' Exhibit 3(b) as to the bulletin from Mr. Bennett and Plaintiffs' Exhibit 3(c) as to the revised form of contract.

(Here follow 2 photolithographs, side folios 1241a-1241b.)

PLAINTIFFS' EXHIBIT 3-C

Agency Agreement

WITH

The Fidelity and Casualty Company of New York

"America Fore"
Insurance and Indemnity
Group

APPLYING THE INTERPRETATION AND CONSTRUCTION HERETO, AS AGREED BY THE COMPANY ON NOVEMBER 1, 1939, THE F AND C AGREEMENT WILL OPERATE AS INDICATED ON THE AMENDED COPY.

AGENCY AGREEMENT

THIS AGREEMENT, made this _____ day of _____ A.D. 19 ___,

by and between _____

_____

of _____ in the County of _____

and State of _____

hereinafter designated as "Agent", and THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation duly organized and existing under and by virtue of the laws of the State of NEW YORK and having its principal office in the City of NEW YORK and State of NEW YORK, hereinafter designated as "Company":

WITNESSETH THAT:

Pursuant to request that the underwriting facilities of the Company be made available to the undersigned, as Agent, the Company hereby grants authority to Agent to receive and accept proposals for such contracts of insurance covering risks on properties located in _____

_____

as the Company has authority lawfully to make; subject, however, to restrictions placed upon such Agent by the laws of the state or states in which such Agent is authorized to write insurance business and to the terms and conditions hereinafter set out.

IT IS HEREBY AGREED between the Company and the Agent as follows:

(1) Agent has full power and authority to receive and accept proposals for insurance covering such classes of risks as the Company may, from time to time, authorize to be insured; to collect, receive and receipt for premiums on insurance tendered by the Agent to and accepted by the Company and to retain out of premiums so collected, as full compensation on business so placed with the Company, commissions at the following rates, viz:

SCHEDULE OF COMMISSION ALLOWANCES

	Per Cent
Liability—except as stated below	
" Employers	" "
" Automobile on Public Passenger Carrying Risks	" "
" " Longhaul Truckmen Risks	" "
~~Garage Drivers Forced Plan~~	
Workmen's Compensation	" "
" " Volunteer Firemen's Section 205 N. Y.	" "
~~Incorporated Budget Plan (Monthly Premium Payment)~~	
Property Damage and Collision—except as stated below	" "
" " " " Automobile	" "
" " " " Automobile on Public Passenger Carrying Risks	" "

Automobile on Public Passenger Carrying Risks ____ "

" " " " " Longhaul Truckmen Risks ____ " "

~~Safe Driver Reward Plan (Property Damage Only)~~

Burglary ____ " "

Securities Insurance Policy—Outside Messenger Hazard ____ " "

" " " Premises of Assured ____ " "

Plate Glass ____ " "

" " Inspection and Claim Service ____ " "

Steam Boiler, Engine, Flywheel, Machinery and Electrical Equipment ____ " "

Accident & Health—~~(excepting Policies issued to Commercial Travelers Policies)~~ " "

Safe Depository Liability ____ " "

Compulsory Automobile Liability ____ " "

Combination Residence ~~(except Workmen's Compensation policies)~~ ____ " "

In the event of termination of this Agreement, the Agent having promptly accounted for and paid over premiums for which he may be liable, the Agent's records, use and control of expirations shall remain the property of the Agent and be left in his undisputed possession.

It is a condition of this Agreement that the Agent shall refund ratably to the Company, on business heretofore or hereafter written, commissions on cancelled liability and on reductions in premiums at the same rate at which such commissions were originally retained. **prior but not subsequent to the termination hereof**

(2) For the convenience of the Agent the Company will send monthly to the Agent a record of the business of the month placed by the Agent with the Company, the premiums on which, if collected by the Agent, shall be paid to the Company promptly thereafter.

(3) Company shall not be responsible for Agency expenses such as rentals, transportation facilities, clerk hire, solicitors' fees, postage, advertising, exchange, personal local license fees, ~~adjustment by the Agent of losses under policies issued by the Agent~~, or any other Agency expenses whatsoever. **Company will be responsible for any company expense it authorizes the Agent to incur.**

(4) Any policy forms and other like Company supplies furnished to the Agent by the Company shall always remain the property of the Company and shall be returned to the Company or its representatives promptly upon demand.

(5) The Company reserves the right to cancel any policy or other contract of insurance or suretyship by direct notice to the insured or obligee, **upon giving the Agent prior notice of such intention.**

(6) The Company may at any time, by written notice to the agency, change the schedule of commission allowances. **and mutual agreement with**

(7) This Agreement supersedes all previous agreements, whether oral or written, between the Company and the Agent and may be terminated by either party at any time upon written notice to the other. **30 days**

IN WITNESS WHEREOF the Company has caused its corporate name to be subscribed hereto and the Agent has set ____ hand and seal on the day and year first above written.

THE FIDELITY & CASUALTY COMPANY OF NEW YORK

ATTEST:

By ____

____ ____

(Agent)

[fol. 1242] COURTLANDT OTIS, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. What is your present business connection and occupation?

A. President of Otis-Jones & Company, Inc., and partner in Otis-Jones & Company, a partnership, both engaged in the insurance brokerage profession.

Q. Where is your office address?

A. 90 John Street, New York City.

Q. What were your prior occupations to this one, if any?

A. The same.

Q. What sort of personnel do you have in number and in classification besides the partners?

A. Besides the partners we have ten employees and associates.

Q. Do you produce in New York any casualty, surety or fire risks covering in other States?

A. Yes.

Q. What part of your business would you say is this out-of-State coverage in premium volume?

A. Approximately one-third.

Q. What sort of casualty and surety risks are so produced?

A. It is general.

Q. Is the coverage outside of New York confined to one or two States or a good many?

A. Right many States.

Q. As to this out-of-State coverage in which we are interested, is it usually rated by the manual or equity or experi-
[fol. 1243] ence rated? Of course, if there is no usual rating and it is sometimes one and sometimes the other, you are at liberty to say that.

A. That is what it is.

Q. Some of all kinds?

A. Some of all kinds.

Q. In the case at bar the issue has arisen whether the New York broker is able to produce this business covering outside of his own locality because of his personal relations with the officers and directors of the assured and the desire of these people to have a friend or relative receive commis-

sions, or whether there is a sound economic reason for the New York producer occupying the status as the producer of the business. I will ask you to state from your experience and observation what is ordinarily the fact as to this?

A. We handle several nationwide accounts and we haven't a single one of them that we secured through knowing the officers or directors. We secured them on a purely merit basis.

Q. Where you have accounts covering outside of New York, could you give me some idea of the different lines of business in which these assureds are engaged?

A. A dairy company, cement companies, public utilities, paper companies, textile and leather.

Q. Are the paper, textile and leather people to whom you refer manufacturing people or simply middle-men?

A. Manufacturing.

Q. Could you give the Court an explanation of what it is about you that makes it economical for these assureds to [fol. 1244] give you their coverages in places remote from New York?

A. From our experience it is always advantageous for a concern doing an interstate business to have its insurance handled by a brokerage house and written in one policy of insurance, and that brokerage house should be located in the city where the executive offices of the assured are located.

Q. What are the advantages from covering a particular risk—we will say the Workmen's Compensation exposures of that company—with one insurance company and handling the compensation matters that come up only with that one brokerage house?

A. I would like my answer to refer not only to Compensation but to other lines of insurance. The first thing that you gain by having the insurance placed through one brokerage house is that you get a better form. We are able to work out a better form to be attached to the policy so that the coverage is much broader than the individual policy would afford. Secondly, with the volume of business being placed in one policy, you are able to work out a better rate than you could with individual rates applying in the individual States and, thirdly, when it comes to the question of analyzing the loss experience and making suggestions for improving that experience, it can be done only through a source that has all of the various locations in hand.

Q. In the case of these risks do you ordinarily place them with some general agent of the company or do you place them either directly with the Home Office or with a Branch Office?

A. We do both. We place, I should say, largely through the New York offices of companies but once in a while we use a general agency.

[fol. 1245] Q. Where you deal directly with the company does this have any effect on reducing premium rates at times?

A. No, I wouldn't say that it does. We do equally well with companies and general agents.

Q. How does such a producer go about selecting the company with which to place any particular risk?

A. We know our markets pretty well and we analyze the risks, the insured's business, the type of covers that we wish, and then we go to the company that we feel can best write that line of business.

Q. You are always able to make an original selection of a company that proves wise in performance, or do you ever have any occasion to change a company after you place a risk?

A. We very seldom change risks from one company to another. We naturally first select a company for its loss-paying ability. That is the most important thing from a broker's standpoint, to make sure that the losses will be paid if and when they arise.

Q. Do you scatter your business around, depending on the risk?

A. Yes, we use various companies.

Q. You don't look to any one as preeminent in all lines?

A. No.

Q. Do the assureds question the selection by such a producer of the company or question his change of the company on the rare occasions when he may change it on a renewal date or mid-term?

A. No, they take our word for those things.

Q. What about your ability to change an insured from a [fol. 1246] mutual company to a stock company or from a stock company to a mutual company, assuming they are all g od companies?

A. We don't place business with mutual companies.

Q. Assuming that you did change your policy in that regard, would you suppose you would have the ability to place business with them if you recommended it to your clients?

A. I would like to qualify that. We do do business with one mutual company which writes a non-assessable policy and has been in business almost a hundred years, and they operate through brokers and do not attempt to deal directly with the assured.

Q. Have you ever had any experience in trying to get people out of a mutual company into a stock company?

A. Yes, often.

Q. Does that enable you to form an opinion as to whether it is a rare thing to find a responsible assured who likes mutual companies, or whether it is a frequent thing to find responsible assureds who like them?

A. It is a frequent thing.

Q. Would that form a basis for enabling you to say whether if you change your policy and decide to boost the mutual companies, you could get assureds to go into mutual companies?

A. Oh, yes, we could quite easily.

Q. In placing excess insurance or on any other occasions do you ever find that, all things considered, it is best to place insurance with a company not admitted to the State of coverage or do you pretty generally try to get one that is admitted to the State of coverage even if it is an excess insurance line?

[fol. 1247]. A. We never consider that. We never ask the excess company whether it is admitted or not admitted. It doesn't make any difference. We are not interested at all.

Q. In other words, an excess company can serve your purposes just as well whether it is admitted or not admitted?

A. Absolutely.

Q. Our record isn't very clear about the volume of excess insurance. Is that a substantial part of the average broker's production or not?

A. Well, there is quite a bit of it. I don't know what would be meant by the word "substantial" but we write several policies covering large risks, nation-wide risks, in our office on an excess basis.

Q. And the assured covers himself up to a certain stated amount and he has insurance from the company for losses on those exposures above those amounts; is that right?

A. That is the usual way, but we also have contracts where the primary company carries a certain amount and then there is an excess over that but it usually insures itself for a certain amount and then an excess covering over that.

Q. Is it your general conception that the leading brokers occupy at least as good a position in the metropolitan business community as the leading agents do in the small communities of the country as to their relative positions in the community?

A. Exactly. There are no what we call local agents in New York City. They are all general agents who represent companies and act as branch offices and Branch Managers for those companies.

[fol. 1248] Q. And you brokers represent, in a substantial sense, the true producers and are in direct contact with the public?

A. We are the producers in connection with the public.

Q. And the true producer is almost exclusively numbered among your class of brokers?

A. Yes.

Q. What is the reason, do you suppose, why the assureds should place business in this vicinity so exclusively with gentlemen not representing the companies but gentlemen who are only devoted to the interests of the assureds?

A. The trend throughout the country today is for the producers to be brokers and not agents. You will find that the larger agents in the big cities throughout the country are today in the main becoming brokers, the reason being that a broker can pick the company that he feels will best serve the interests of the assured and is not restricted to the few companies that he may represent as agent. That is a very definite plan. For example, New York and San Francisco were the only two cities for a long time that had brokers' organizations but today we have brokers' organizations in Chicago, St. Louis, Philadelphia, Boston, and they are being formed in other cities.

Q. Speaking about the fact that you brokers exclusively represent the assureds, what is the effect of this status when you come to deal with the companies on a coverage question or claim settlement where it is a matter of indemnity rather than a third party claim?

A. Never having been an agent for a company, I don't [fol. 1249] know, but I feel that naturally an agent is much closer to a company than a broker is. We get our claims

settled very promptly because we deal with companies that have excellent loss-paying records and want to do the right thing in regard to the public.

Q. Have you ever, in your experience, thought it might be advantageous to you to associate in some line of business with you a man who occupies the status of an agent to a company simply because of the fact that you thought he could get better cooperation from the company in connection with the engineering of the risk or handling claims?

A. No.

Q. Do you brokers ever find it expedient to divide your commissions of your motion with agents in coverage localities in order to make their services available to you for general or special purposes in connection with the contracts?

A. No, we have never voluntarily divided our commissions with any agent nor have we ever felt the need of doing so.

Q. Do the assureds ever ask a firm such as yours, according to your experience, to let some local agent in on a piece of business somewhere?

A. Very seldom. We have only one client who has ever requested that procedure and that is a public utility which, for public relations reasons, feels that a small portion of the commission should go to an agent in a particular locality.

Q. Is that in connection with fire lines or casualty and surety?

A. Both.

Q. Have you found in that case to which you refer that you have been relieved of any part of your work or respon- [fol. 1250] sibility because of that association? If so, please say to what extent it has relieved you?

A. No, they have absolutely nothing to do with the servicing of the risk. We do it all here from New York City and this commission is taken by them as a form of velvet.

Q. What experience have you had in recent months since they have had these fifty-fifty laws in some of the States with reference to companies in which you sought to place business telling you that they had to give part of the producer's commission to a local agent and asking you to give up a part of your commission to provide a fund for the payment to the local agent? Have you had any of them?

A. Some companies have said that that had to be done

and other companies haven't made any mention of that whatsoever.

Q. Have you acquiesced where they have asked you to give up part of the commission or have you failed to acquiesce?

A. In one or two cases we have acquiesced but we are planning to take that business away from the companies upon renewal.

Q. Did you have any hesitation in making it plain to your assureds that that is the reason you were taking it away from the company?

A. No, we intend to tell the assured about it.

Q. How will you justify that?

A. We make it very plain to our assureds that we need every bit of the commission that we receive to properly service their risks. At this point may I say that the assureds in one or two cases, where they have found that we have to pay a local agent merely for the reason of putting his name on the policy, are very much surprised at this procedure in the insurance business and feel that it is an imposition, not only upon the insurance broker who services [fol. 1251] the risk but also upon themselves.

Q. In fire business do you know what the countersigning agents in the coverage localities get or is that something that is handled without your knowledge of its details?

A. I haven't the slightest idea as to what they get. I understand it varies greatly according to the locality and the agency.

Q. Does what you receive for producing fire business vary?

A. Yes, that varies too.

Q. Within what limits of maximum and minimum in the past twelve months, would you say?

A. It has varied between ten per cent and twenty per cent.

Q. You have gotten as high as twenty per cent even in the case of these coverages in which I am interested and which are quite removed from the metropolitan area?

A. Yes.

Q. It is in contemplation of these Virginia agents, under a resolution that they adopted in February, some time after this suit was brought (and when I speak of the agents I refer to the Virginia Association of Insurance Agents, Inc., which is our State organization) that one of these Virginia

countersigners is going to carefully investigate a risk and contact the assured and find out all about the conditions governing the kind of coverage he needs and then is going to make a careful check of the policy in all respects, including rating, and then he is going to service that risk after he countersigns it from the time the contract becomes effective until it expires, notwithstanding that an out-of-State [fol. 1252] man is the producer. I ask you whether you would view with alarm, favor or indifference the introduction of such a third party into your affairs where the coverage is outside of the metropolitan area?

A. We would view it with alarm and disfavor.

Q. Could you explain the reasons for that?

A. Yes. In the first place, the forms that we devise for the coverage of our clients are forms that we have worked out over a period of a great many years and they are far superior to the forms that are generally in use by the company. Therefore, we certainly do not wish any other agent or broker to see our forms if it can be helped. Secondly, we do not wish any other agent or broker to contact our assured for the reason that they may say or do something which would interfere with our pleasant relationship with that assured. Thirdly, the agent could absolutely be of no use to us so far as engineering and other services are concerned because these services are rendered by the company which is much better qualified to do it than any agent.

Q. Your office's practice, before you deliver a contract to an assured, is to make a record of the name and address of the countersigner of that contract in the several states in which it may have been countersigned by a commission agent?

A. No, we never make any such record.

Q. Would you be any more inclined to make a record in a case where he had gotten half of the commission than you would in a case where he got a fourth of the commission for countersigning or anything else he proposed to do?

[fol. 1253] A. We don't intend to stand for half of our commission being given to a local agent.

Q. I wasn't assuming that it is going to come out of your pocket; I was assuming that it is going to come out of the companies. Do you care what he has gotten for countersigning or would you be any more inclined to keep any record of the identities of these various countersigners because

the company had paid them more or less for doing the countersigning?

A. No.

Q. What employee of an assured in your experience usually places its insurance contracts?

A. In 99 cases out of 100 it is either the Treasurer or the Insurance Manager working under the Treasurer.

Q. Where is that man usually located with reference to the principal office of the assured?

A. He is usually and practically always located in the principal office.

Q. Do you find that there is anything in your relationship with such a man that could fairly be considered confidential in respect to the information about the operations of a corporation which he confides to you and the carrying Company?

A. That is the rule rather than the exception.

Q. What sort of information is there that those men are called on to supply to you and the carrying company that [fol. 1254] you think perhaps they would not be willing to confide to any countersigning agent in any county of Virginia who happened to come in and wanted to know about that particular line? For instance, do they freely tell you what the salaries of different people in the company are and the tasks of the different people in the company?

A. Yes, we have to have that information. We have to have information on exactly how they operate; we get information regarding subsidiaries which is not public knowledge in any degree. There are loads of cases of information that we are told which is just between the assured and ourselves.

Q. Are you required to know the carrying value of their various assets and, in certain instances, the carrying value of their accounts receivable and the way in which their various plants are operating in various localities and their future expectancy as to operations and things of that sort?

A. That is right.

Q. Do you need to make any inquiry as to the details of the operations from which they make profits and the operations from which they sustain losses and, in connection with use and occupancy on rental value insurance, or are you ever concerned with where they make the money or where they don't make it?

A. We don't often go into that phase of it in that detail. We do sometimes but not often. We take the business as a whole.

Q. You feel that no question, bearing on the exposures of such a corporation would cause you to apologize for your presumptiveness if you asked it and expected an answer to it; is that correct?

[fol. 1255] A. That is correct.

Cross-examination.

By Mr. Staples:

Q. Mr. Otis, are you licensed as a non-resident broker in Virginia?

A. I am.

[fol. 1256] Q. What percentage of your business is fire insurance?

A. Less than ten percent.

Q. And what percent of it is casualty?

A. About 70 percent.

Q. And what percentage is surety?

A. About 15 per cent.

Q. And the other five percent is what?

A. It would be inland marine and marine, fire, theft, and fire and theft, and collision.

Q. Do you look principally after the casualty business or do you also look after the fire business of your office?

A. No, our office operates through each partner servicing his own accounts, so that I will service for my clients the entire insurance set-up.

Q. When you say you service it, what do you mean by that?

A. First of all; we analyze the hazards to which an assured is subject through the operations of his business and we recommend and call to his attention the types of insurance coverage that that firm requires. We discuss with them not only the types but the amounts of coverage. We then draw the forms that should be attached to the various policies, have the policies issued at rates which we feel are fair and just, based upon the experience that the assured has had in the past, and when losses arise we collect all premiums and see that on third party claims the proper attention is given by the insurance companies to those

third party claims. We arrange with insurance companies [fol. 1257] to have their inspectors inspect the risks on all engineering viewpoints; we arrange with companies to have their safety men attend safety meetings of the assured, and do everything possible to cut down the losses because it is an axiom in the insurance business that the only way to reduce rates is to reduce losses. So that we are constantly working with an assured to reduce his losses and then, finally, we take care of all the changes in the equipment and new locations and disposal of old locations that may occur from time to time in the assured's business.

Q. The insured informs you of those changes of location, I suppose, does he not?

A. Yes.

Q. Do these large companies have an insurance manager who doesn't do anything else much except look after the insurance of his company?

A. That is true; they do.

Q. Is he usually a good insurance man, or not?

A. Yes, he is. If he isn't one when he begins, he becomes educated through his contact with the broker. We frequently aid and assist in the education of a man who becomes Insurance Manager for the first time.

Q. After the man becomes pretty well educated he doesn't need you to work out his types of insurance for him and plan his insurance, does he?

A. Yes, he does, for this reason, that the insurance business is constantly changing. New forms of insurance are being devised; companies that didn't feel that they could give certain types of coverage in the past begin to give [fol. 1258] them in the present, and we, as brokers are in constant touch not with just the problems of his own firm, but with the problems of many firms and as such we are able to gain knowledge of these new developments and to bring about the developments in a way that he can't do so that no matter how bright he is,—and I know some very fine and excellent insurance managers,—our assistance and knowledge that we gain through being in the open market is of great value to them and, in addition, we do for them what is awfully hard for them to do and that is to check the loss experience and make certain that the reserves on cases are accurate and also that the proper cases are included in the loss figures.

Q. You mean that a man whose business is solely to look after the insurance of his company doesn't know how to check his loss experience?

A. Not as well as we do for the reason that we have all been in the claim departments of companies and we can do things, with the experience we have had, and get the cooperation of the claim men in those companies better than he can.

Q. Why can you get it better than he can? Wouldn't they pay just as much attention to him as they would to you?

A. No. We are the people that are in constant contact with the company; we give the companies not only the insurance for that particular firm but we give them insurance for a great many other firms and naturally they are going to cooperate with us more than they will with the insurance manager of one firm.

Q. If they are trained insurance men they certainly would [fol. 1259] discuss their problems with one another, wouldn't they?

A. They do theoretically but not actually, for this reason, that all large firms and nation-wide corporations have special contracts and the insurance managers know that those contracts cannot be kept if the details are given to every Tom, Dick and Harry, so they only discuss their problems with each other on a theoretical basis, not on an actual basis.

Q. If you are going to use information that you get from one company for the purpose of assisting another, I don't see any difference in their discussing it with you and in discussing it among themselves. What is the difference?

A. We don't use any information that we get from one client for the benefit of another. We devise forms which we can use with various clients but we are the ones who devise the form.

Q. I thought you said by reason of your familiarity with the insurance details of other assureds that you were able to help each of those assureds by reason of information you get from the others? Did I understand you correctly?

A. No, you must have misunderstood me. What I said or, at least, what I thought I said was that we devised the forms for the various companies that we handle the insurance for.

Q. You think that this insurance manager that they have

looking after their insurance business is not able to devise the forms?

A. I think he can help but he doesn't know the business the way we do.

Q. You think you know more about it than he does?

A. I am confident that we do.

[fol. 1260] Q. And the fact that you think you do know it better than he does is about the only reason that you can see why these big national corporations shouldn't deal direct with the insurance companies instead of going through a broker?

A. Yes, I think that is the main reason. In other words, if they could deal directly with an insurance company and not require the services of a broker, I think they would do it, but they realize that the knowledge that a broker has, plus the assistance that he can render in the settlement of claims, is of great value to them and that is why they employ brokers.

Q. The insurance companies wouldn't deal directly with them. There is a rule that they will only deal through brokers or agents?

A. There have been cases on record where insurance companies have dealt directly with the assureds, but that practice has practically disappeared.

Q. That is regarded as a violation of the ethics of the business, isn't it?

A. You are talking now purely about stock insurance companies, because you realize that mutuals and reciprocals do deal directly with the assured.

Q. I am talking about the same companies you are?

A. I don't know whether it is a violation of ethics so much as a realization by the insurance companies that they can't expect to ask for business from agents and brokers and then at the same time deal behind the agents' and brokers' backs directly with assureds.

Q. That is the reason for the rule, isn't it?

A. It is not a rule; it is a practice.

[fol. 1261] Q. The reason for the practice, then?

A. Yes, I think it is but I am trying to convey that I am not so certain that it is a question of ethics that is involved.

Q. Does your office have associated with it local agents in the fire business?

A. No, we do not.

Q. Do you have any fire insurance business in Virginia?

A. Yes, we do.

Q. Don't those agents down there on fire insurance policies get part of the commissions?

A. I imagine they do.

Q. Do you know of any reason why different rules should prevail with reference to fire insurance and casualty surety in that respect?

A. I don't myself see that the agent in either case renders any assistance and, if he does render any assistance, he renders it from the standpoint of the company and should be paid by the company. So far as the broker is concerned, the agent renders no assistance whatsoever.

Q. You don't know whether he might render some assistance to the assured, do you?

A. When I say to the broker, I mean to the broker and the assured because, after all, the broker is servicing the insurance for the assured and our relations are identical.

Q. If the assured happens to call on the agent down there who countersigns his policy for some service and gets it, he would be rendering some, wouldn't he?

[fol. 1262] A. Yes, but he never does call on the agent who countersigns the policy.

Q. What makes you say that? The agents down in Virginia said differently and they ought to know more about it than you do. They live down there.

A. No, I am afraid they don't in this respect if that is their testimony for the simple reason that the policy of insurance is retained by the assured in New York City and the local Branch Manager in Virginia hasn't the slightest idea of the agent who countersigns the policy. Whenever he wants to call on anybody he writes to the main office in New York and the Treasurer, who receives the letter, then calls us on the telephone and says that the Branch Manager or the plant manager in Virginia would like to have an inspector of the company, or whatever it is, call and see him.

Q. Are you talking about casualty or fire?

A. I am talking about both.

Q. Does the Branch Manager in Virginia have anything to do with business written through your office?

A. Not a bit.

Q. I thought you said he wrote up here and got in touch with you about it?

A. No, I said he wrote to the Treasurer of his company and the Treasurer got in touch with us.

Q. The Treasurer of the insurance company?

A. No, the Treasurer of his own company.

[fol. 1263] Q. You are not talking about the insurance Branch Manager; you are talking about the assured's Branch Manager?

A. Yes, I am talking about the assured's Branch Manager, and the assured's plant manager. We don't deal with the Branch Managers of insurance companies in Virginia. All of our dealings are through their offices in New York.

Q. Through the Branch Office in New York or the Home Office if the company is located here?

A. That is right.

Q. Is there any reason why the local agent in Virginia on the scene of the risk shouldn't be able to render service to the assured's Branch Manager if anything comes up that he feels the agent could be helpful in?

A. Yes, there are lots of reasons. First of all, he doesn't understand the operations of the business.

Q. How do you know he doesn't?

A. He is not thoroughly acquainted, if at all, with the policies that cover that particular assured with the possible exception of the one policy that he may countersign, although I question very much whether the agents keep copies of those policies, and it would be entirely out of order and extremely hard for an agent to give an intelligent answer under those conditions.

Q. Don't you know it is the practice in Virginia for the local agent who handles the countersigning and such service as he renders there to retain a copy of the fire insurance policy?

A. Of that particular policy he may well do it but on [fol. 1264] casualty insurance I know he doesn't.

Q. It hasn't been customary in Virginia for him to countersign casualty policies and, therefore, the rule would be different, but it has been customary, so the testimony shows, for the local agent, the commission agent, to countersign fire insurance policies and retain a copy of the policy. If he does have a copy of the policy, then he would certainly have that much information, would he not?

A. About that one policy.

Q. That is the only policy he is supposed to be servicing, the policy he is countersigning, is it?

A. He is not supposed to be servicing any policy from us.

Q. You mean you don't expect him?

A. We don't pay him anything for doing it. If he is paid any commission by the company it is paid by the company for services that he renders to it. We are not paying him any commission for services to us.

Q. I wasn't speaking of service rendered to you—I was speaking of service rendered to the assured and you are not the assured?

A. No, but we represent the assured.

Q. But you are not the only people who represent the assured, are you?

A. Who else would except the broker?

Q. He has a branch manager down there who represents him, doesn't he?

A. Not in regard to the insurance.

Q. He can represent him if the company wants him to, can't he?

[fol. 1265] A. Sure, he could, but they never do.

Q. If the company feels that they could secure any valuable services from a local agent, there is no reason why the Virginia State Manager of the Company, that is the assured, should not take it up with the local agent and get such services as he desires, is there?

A. Let me understand you. When you say the Virginia State Manager, are you talking about the assured's Virginia State Manager?

Q. Yes.

A. We have never had that happen in our experience but it is possible.

Q. You might not know anything about it?

A. Oh, yes, we would have to know about it because the master policy is written through New York.

Q. How would you know about it if the local Virginia agent attended a safety meeting of the employees or something of that kind? They wouldn't necessarily inform you, would they?

A. Well, I think it would leak out sooner or later.

Q. It would leak out?

A. It would leak out.

Q. Why would it leak out? There is nothing surreptitious about it, is there?

A. It is exactly contrary to the practice. I never in my

life have known of a countersigning agent who attended a safety meeting of an assured.

Q. There is no reason why he shouldn't if the assured wants him to, is there?

A. No, if the assured wanted him to there would be no [fol. 1266] reason why he couldn't attend.

Q. Do you ever attend safety meetings?

A. Yes.

Q. In what States have you attended them?

A. New York and New Jersey.

Q. Have you ever attended any in Virginia?

A. No.

Q. Do you have an inspector employed in your office?

A. No, we use the companys' inspectors.

Q. Do you ever find it necessary to go to the location of a risk and render any service to the assured?

A. Practically never. All of our contacts are performed through the main office of the assured in New York City.

Q. Your practice then is different from Mr. Thomas who is a broker here in New York?

A. Yes, I know Mr. Thomas.

Q. Mr. Thomas testified that they have an engineer employed in their office who travels around over the country and inspects these risks?

A. He may well do it. Some brokerage houses do have their own engineers.

Q. You haven't found it advisable to do it in your practice?

A. No, we prefer to use the engineers of the companies.

Q. These engineers of the companies frequently make recommendations that the assureds spend a lot of money in accident prevention measures, don't they?

A. That is right. That is where we enter the picture.

[fol. 1267] Q. How can you tell anything about the local conditions if you don't go there as to whether these expenditures are necessary? You can't tell from looking at some records and documents up here as to the necessity for that expenditure, can you?

A. We don't attempt to. The assured has his own engineers and we put the problem up to the assured and if his engineers concur with the recommendations of the insurance company's engineers, then the recommendations are complied with. On the other hand, if the assured's engineers disagree with the findings of the company's engineers, then

we get the company men and the assured's men together and find out which are correct.

Q. Is the assured's engineer a resident of New York, usually?

A. Yes, generally speaking, the engineers of the assureds work out from New York.

Q. The assured's State Manager would probably have some ideas himself about the necessity of spending the money, wouldn't he?

A. When you say "State Manager", I imagine you mean plant manager?

Q. Whoever is in charge of the work. It doesn't make much difference what you call him.

A. Yes, and his views are naturally taken into account along with the engineer of the assured who visits the plant.

Q. The engineer for the Travelers testified that in connection with his work of making these recommendations for spending money he had very frequently—I think he said [fol. 1268] in 26 out of 27 cases, or something of that kind—arguments with the local agents down there as to whether it was necessary for the money to be spent and the local agent frequently didn't think so and took the position of trying to protect the assureds from one of two consequences, either having to spend a lot of money or having his policy cancelled.

A. I know nothing of it.

Q. You can see very well that that would be a very appropriate service to render, can't you?

A. To refuse to have——

Q. Unnecessary expenditure; that is, the agent and the assured's manager in Virginia think it is unnecessary and the engineer who, of course, is looking out for the interest of the insurance company and is willing for the assured to spend unlimited amounts of money if it improves the risk, thinks it ought to be done?

A. Well, in the first place, I don't find that the Travelers or any other insurance company generally makes recommendations that aren't warranted. Sometimes they do and, as I have already testified, in those few cases we get the assured and the company together and work it out.

Q. Mr. Thomas testified that that was one of the principal services that he rendered as a broker—protecting the assured from what he considered to be unreasonable demands

of the engineer or inspector of the insurance company. You haven't had a similar experience?

A. Mr. Thomas may place his insurance with companies that do that. We don't.

Q. How do you know whether they are reasonable, or not, [fol. 1269] if you are not down there and don't see them?

A. We know very well from what the assured thinks of it. In other words, who is the final judge as to whether they are unreasonable or not? It is the assured, isn't it?

Q. Not necessarily. The company might cancel the risk, might it not?

A. We are not talking about cancelling of risks; we are talking about whether the recommendations are unreasonable and if they are unreasonable they have to be unreasonable in the eyes of the assured.

Q. Yes, but if the company thinks they are reasonable and says, "We won't carry this risk any longer unless you do certain things and spend certain money," then you have reached the point where the assured is threatened with a loss of his protection or has to spend money, one or the other. That is the point at which the local Virginia agent steps in, according to the testimony of this engineer of the Travelers.

A. If that ever happened, that would be the point that we would step in.

Q. I believe you stated that it is not considered proper practice for a broker to place business involving a risk in a State with an insurance company not admitted to transact business in that State where the risk is located, did you not?

A. No, I made no statement along that line, to my knowledge.

Mr. Christian: My recollection accords with that of the witness. He said that he was not concerned as to whether the company was admitted or not in cases of excess insurance and didn't care, but I did not ask him about cases of other insurance.

[fol. 1270] By Mr. Staples:

Q. What is your practice in other cases in that respect?

A. We are concerned mainly with whether the company can render service in the States that our assureds have

plants or equipment. We are not concerned with whether they are entered, or not.

Q. Can an insurance company render service in a casualty risk, such as Workmen's Compensation or fleet automobile, without transacting business in the State where the risk is located?

A. They seem to be able to. They have claims men who handle claims that arise in those States.

Q. Don't you know that that constitutes doing business in that State?

A. No. In fact, I don't think it does. According to the law of New York, it doesn't.

Q. Do you believe that an insurance company can properly service a risk of either kind I have mentioned without sending its engineers and inspectors and claim adjusters into the State where the risk is covered?

A. They certainly have to from time to time send claim adjusters in. It all depends on whether the assured has a plant in that State or whether he has just a few automobiles that pass through the State.

Q. I was speaking of a fleet automobile risk domiciled in Virginia or a Workmen's Compensation policy covering an operation in Virginia?

A. If you are talking about a fleet of automobiles or a risk that is domiciled in Virginia, obviously they have to [fol. 1271] service it and in those cases we are always certain of having a company on the risk that is entered to do business in that State.

Q. You would not place a risk of that kind in a non-admitted company?

A. Not a risk that is domiciled in the State.

Q. You say you do place excess insurance in companies not qualified to do business in Virginia?

A. I didn't know that my answer to the question was restricted to the State of Virginia but it is possible.

Q. If you place excess insurance you do not inquire whether the company is qualified to do business in Virginia or not?

A. No.

Q. Are you familiar with the terms of your non-resident broker's license issued to you by the State of Virginia?

A. Yes.

Q. Isn't it one of the conditions of that license that you shall not place business in any non-admitted company?

A. As a matter of fact, every excess policy we have, covering on a risk domiciled in Virginia, happens to be in an admitted company.

Q. If you haven't inquired whether the company is admitted or not and haven't paid any attention to that, how do you know that they are all admitted?

A. I do know in this case. We have only one policy covering excess in the State of Virginia and that company is admitted to do business in Virginia.

[fol. 1272] Q. Do the brokers up here have a standard form that they use or does each broker work out his own form?

A. Each broker works out his own form.

Q. Is the primary consideration of a broker in placing a risk to place it in the company which can best serve the assured and furnish the best protection or is his primary consideration the amount of commissions he will receive?

A. No, the first consideration is the payment of losses, whether the company pays losses fairly and promptly. That is the first consideration. Then, secondly, come the other services that a company can render, such as engineering and inspection and various other services and then lastly comes the question of remuneration.

Q. Aren't those engineering services supposed to be very valuable to the assured in reducing his experience rating?

A. Yes. You mean in increasing the experience credit.

Q. Whatever you call it. It reduces the rate?

A. It reduces the rate but not the experience credit.

Q. Could you or any broker in New York, in conformity with the proper and ethical practice, place an automobile fleet risk or Workmen's Compensation risk in a company not admitted in Virginia because a non-admitted company would pay him greater commissions?

A. No, that would be against the ethics of the profession.

Q. I believe you stated also that you would not place any of your risks with a mutual company or do not customarily [fol. 1273] do it, or something to that effect?

A. We do not customarily do it. I stated that there is one mutual company that we do deal with but by and large we do not deal with mutual companies.

Q. Why is that?

A. Well, the primary reason is that we don't like the claim service that they render.

Q. What about their other service?

A. And secondarily we don't think their other services are as good as the services rendered by stock companies.

Q. Is that true of all the mutual companies?

A. All the mutual companies with whom we have come in contact and we have come in contact with the larger mutuals.

Q. Did you ever come in contact with the Lumbermen's Mutual?

A. Yes.

Q. The Liberty Mutual?

A. Yes, and the American Mutual. Those are the three largest casualty mutuals.

Q. Then it is true, is it not, that a broker in New York, conforming to proper ethical practice, would not transfer a coverage of his assured into a mutual company which you say renders very much less satisfactory claim service and other service in order to obtain greater compensation for his placing the risk, would he?

A. I can only speak for our own firm, and our own knowledge in this respect, but it might be that other brokers feel [fol. 1274] that they do give good service. We don't.

Q. If the other brokers feel like you do about it, it would be unethical and improper?

A. That is correct.

Q. You say that the broker's commission is the same whether he places the business through a general agent or whether he places it directly with the company?

A. That is true.

Q. Why is that?

A. For the reason that the general agent takes the place of the company in its underwriting. A general agency serves as a branch office. That is the purpose of a general agent.

Q. And in a case of that kind the company would receive less net premium than if you place it direct, would it not?

A. It is not supposed to when you take into account the cost of maintaining a branch office. In other words, the cost of maintaining a branch office and the commission paid to a general agent are supposed to be analogous.

Q. But still the company would receive less if you placed it through a general agent than if you placed it direct with the company, wouldn't it, in that particular transaction?

A. I have tried to make the point as clear as I can.

Q. The general agent would get the commission, wouldn't he, or part of the commission?

A. Which part of the commission is supposed to be [fol. 1275] analogous to the cost of maintaining a branch office. That is all I know.

Q. Suppose you don't go through any branch office?

A. You have to go through a branch office.

Q. Do all of the companies have branch offices in New York?

A. All the large ones.

Q. Even though they are domiciled here?

A. Yes, sir. The Home Office is distinct from the Branch Office.

Q. You stated that when you work out a program, I believe you call it, for prospective assureds—is that the correct term?

A. That is right.

Q. You take it to the company that you think is best qualified to serve the risk?

A. We may take the whole program to various companies. For instance, we may think that one company is best for the automobile insurance and we may think another company is best for the burglary and robbery and another one for the surety bonds and another one for the inland marine, and another for fire, and so forth. We never place all the insurance for a concern with one company.

Q. You would split it up, wouldn't you?

A. Yes. That is one of the functions of a broker, to know which companies can best serve which types of insurance.

Q. Isn't it also the practice among some of the brokers to place all the lines in one company?

A. It may be, but I don't happen to know of it.

Q. I believe Mr. Thomas testified that he followed that [fol. 1276] practice and it resulted in getting a much better rate for the assured. Do you know anything about that?

A. That is his opinion. We seem to be going along all right on the plan we use.

Q. Would you take an automobile risk, we will say, to more than one company—the same risk?

A. No.

Q. Why wouldn't you get the best offer that you could for the assured and not just get an offer from one company?

A. We have found through experience that shopping a risk, which is the technical term that we use for the practice you have just expressed, results in higher rates for the assured. Companies will be more cooperative and work out plans with you a lot better if they feel that they are the sole company that you are dealing with than if they feel you are shopping the risk and taking it around to several companies.

Q. How many brokers are usually trying to land a risk in a case of that kind, each one trying to work out the best program for an assured?

A. Of course, the broker that has a nation-wide risk on his books must expect many brokers to walk into the assured during the course of a year and attempt to take it away from him.

Q. And he probably would go in with a program that he would think was better than yours and try to work out something to better satisfy the assured than what you were doing.

A. That is right.

Q. He would probably take his program to a different [fol. 1277] company from the one you were working with?

A. Oh, yes, of course.

Q. So that the net result of this practice of one broker taking his business to one company and another broker taking the same risk to another company, and so on, and a number doing the same thing, really has the effect of these insurance companies competing so as to try to make you a price on the policy or the risk which will be less probably than the one some other company makes another broker; isn't that true?

A. Yes, that is true.

Q. Is it customary for an insurance company just to quote a flat price that they would charge for one of these blanket risks covering different lines probably and also different plants in different States, or do they quote a separate rate on each plant?

A. Oh, no, they quote a price for the assured's entire operations throughout the country on a particular line of insurance.

Q. Have you had any experience in trying to secure a good price where, in order to secure that, you have to take a smaller commission than you might take in other cases where you are placing a similar risk? In other words,

would the company, by reason of paying a smaller amount of commissions in a case, give a better price than if they paid the full commissions?

A. Oh, yes, that is done.

Q. Do you draw any distinction when you approach these insurance companies between a company that is a member of a Bureau and a company that is not a member of a Bureau?

A. We deal with both Bureau and non-Bureau companies.

[fol. 1278] Q. So that the Bureau companies are really in competition for this business with the non-Bureau companies, are they not?

A. That is right.

Q. And they have to meet in that competition such prices or premium charges as the non-Bureau companies may see fit to charge in one of these large complicated policies?

A. That is right.

Q. Did you take into consideration the question of whether or not the company was a member of the Association of Casualty and Surety Executives?

A. We do business with both members and non-members.

Q. That wouldn't make any difference?

A. No.

Q. Would it make any difference whether the company was a member of the Acquisition Cost Conference?

A. No, not a bit.

Q. What is the custom in New York State as to fire insurance policies where the risk is located outside of New York City, say, up around Albany and you are negotiating that risk, as to the participation of the local agent in the commissions?

A. We know nothing about that. We place a risk here in New York City with the New York office of a fire insurance company and we get the policy from the company. That company may have it countersigned by a local agent in Albany or just put his name on the policy and send him a countersignature fee. We don't know. We don't deal with the agent at all.

[fol. 1279] Q. You see the policies, don't you?

A. Yes, we see the policies.

Q. Are they countersigned by local commission agents or not?

A. Sometimes they are and sometimes they are not but whatever fee they get they get from the company.

Q. You spoke of the local agent who countersigns a policy and what he might know about the risk or should know about the risk. If you were responsible for countersigning and issuing a policy, wouldn't you feel like he would let you know something about it?

A. I have never been in that position but, from my talks with agents, I believe that they regard the countersignature fee as just a form of gravy and I do know this as a fact that in the old days, when a special agent of an insurance company went out to appoint an agent in a local community to represent his company, he would ask the agent how much business he could be expected to develop for the company, whereas today it is not unusual at all but it might almost be said to be the practice for a local agent, when he is appointed by the company, to ask the company how much business he might expect to receive from them for countersignature.

Q. And that is the custom around the country generally, is it?

A. It is getting to be the custom.

Q. That these local agents feel that they are entitled to that business?

A. No, I don't think they feel they are entitled to it. They want to get it. It is a form of gravy.

Q. It is part of the compensation for the work that [fol. 1280] they do in representing the company, isn't it?

A. I don't think for a minute that they feel they are doing any work in signing the policy.

Q. It depends largely on what the agent thinks about it and whether he wants to investigate the matter and find out whether he thinks it is in such shape as he should sign it, doesn't he?

A. If it is his duty to investigate the risk, then he certainly would be entitled to a fee from the insurance company and I don't doubt for a minute but what the insurance company would be very happy to pay such a fee, but when he receives a fee merely for countersigning the policy, that is nothing more or less than just gravy.

Q. Of course, the mere work of countersigning a policy is just a clerical act, worth practically nothing, isn't it?

A. Absolutely.

Q. And if that is all an agent does I agree with you he is not entitled to be paid anything, that he should do that as a matter of accommodation if he represents a company,

but where the agent feels a responsibility in the matter when he countersigns a policy and feels he should not countersign it without informing himself about the risk and whether the policy is correctly prepared and adequately covers the risk, you would have a different situation, would you not?

A. To my mind, it is not a question of whether the agent himself feels the responsibility. It is a question of whether he has to do so.

Q. He has to sign it, hasn't he?

A. The act of signing, as you have just stated, amounts [fol. 1281] to nothing. If there is any other service that he is to perform, then he performs it either at the request of the insurance company, or at the request of the original producer on the risk, assuming that the agent is not the original producer.

Q. It depends on what significance attaches to his signature, doesn't it?

A. It depends upon his instructions.

Q. If the law requires him to countersign it, he is entitled to place his own construction on what his responsibility is in the matter, isn't he?

A. I don't know.

Q. And your testimony along this line is predicated upon your belief and your attitude that when a countersigning agent countersigns a policy he doesn't feel any responsibility at all in the matter; is that true?

A. No, I would say that my attitude in this matter as a broker has to do with my firm belief that the agent can be of absolutely no service to me when he countersigns a policy.

Q. You say you would view with alarm and disfavor a local agent undertaking to service a risk in Virginia. Why is that? Would you feel that his action is hostile to you in trying to get the business away from you, or something of that kind?

A. That is one phase of it. Of course, the agents in Virginia are constantly trying to take our business away from us in this State. So that is a very real factor, but another very real factor is this, that he might well handle a claim in a manner such as to prejudice the rights of the assured [fol. 1282] under the policy and thereby prevent the claim from being paid and enable the insurance company to deny liability which, of course, would be very unfortunate.

Q. You might do that too, might you not?

A. Yes, but that is our responsibility, it is our business, and if we do such a thing we suffer the consequences.

Q. If it is partly his responsibility he suffers the consequences also, doesn't he?

A. This isn't his responsibility.

Q. That is where there is some difference of opinion in this case?

A. I don't think there can be any difference of opinion. I don't see how there can be any difference of opinion just as I don't feel there is any difference of opinion on business that is written and serviced by the agents of Virginia.

Q. The Virginia Association of Insurance Agents has taken an entirely different view of the situation as to their responsibility in the matter, and have adopted a resolution to the effect that they should contact the assured and familiarize themselves with the risk and feel responsible for the policy when issued and should honor and respect the rights of the non-resident broker who negotiated the contract.

A. Well, I think that would be a very dangerous precedent and I feel certain that the Virginia agent, for example, who handles the insurance for the Richmond Life Insurance Company, or any other life insurance company domiciled in Virginia, would not want a New York agent to contact the assured on his own risk. I feel very confident of that. [fol. 1283] Q. You are talking about life insurance?

A. The Richmond Life Insurance Company, assuming that the Richmond Life Insurance Company does business in New York State, I feel sure that the Richmond agent who handles that business would not want a New York State agent to contact the assured and participate in discussions, and so forth.

Q. Naturally, no agent would want somebody else to get part of his commissions?

A. I am talking from the standpoint of service to the assured. I don't think he would want him interfering with the conduct of the business at all. If he did I don't think he is best serving the interests of the assured.

Q. This law doesn't apply to life insurance?

A. No, I am talking about life insurance companies, their own business, like fidelity bonds, for example, and public liability insurance. After all, a life insurance company needs insurance just the same way other assureds do. They

carry fidelity bonds on their employees and they have public liability on their branch offices.

Q. Would you think that a risk on a Virginia plant of one of these large national corporations, which is an independent operation of the company that owned it, would have any relation to a risk on *an* another similar plant of that company located in another State, insofar as the insurance is concerned or the rates which should be paid?

A. Yes, absolutely.

Q. What relation would it have?

[fol. 1284] A. It is all treated as one risk. That is the practice in insurance, to treat all units of a nation-wide concern as a single risk.

Q. So that when an insurance company would figure on the Virginia risk, they would either burden it with a bad experience suffered in another State or give it the benefit of a good experience in a similar plant owned by the same assured in another State; is that true?

A. That is right.

Q. This information that you told Mr. Christian about getting from your assureds which is of a confidential nature, is that the same information that the insurance company, which is considering the risk, would require?

A. Sometimes it is and sometimes it isn't.

Q. What type of information would you need that an insurance company wouldn't need?

A. It isn't always a question of what we need so much as what they tell us—both.

Q. I am speaking of information that is relevant to the risk. I don't mean just general conversations you might carry on about something that hasn't anything to do with your insurance problem, but I am speaking about information relating to the particular problem which you may have outlined to a prospective assured. Is there any information that you would require in connection with that risk that the insurance company would not require?

A. I can't offhand think of any except that we do go into it a little bit more minutely sometimes than we have to go into it with the insurance company.

[fol. 1285] Redirect examination.

By Mr. Christian:

Q. On the other hand, Mr. Otis, am I right that you require information about various and sundry things in order

to determine what exposures exist and what coverages you want, whereas the insurance company is only concerned with the final product of your deliberations and study and with the coverages which you select from all the possible coverages to present to it for discussion?

A. That is true. That is what I tried to convey by my answer, that we go into it more minutely with the assured than we do with the insurance company.

JAMES A. BURBANK, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Please state your position and the location of your home and office?

A. I am the Superintendent of the Engineering and Inspection Division of the Travelers Insurance Company. My office is located at Hartford, Connecticut, and I reside at 69 Mohawk Drive, West Hartford, Connecticut.

Q. How long have you held this position?

A. Since December, 1934.

Q. Generally what are the duties of your position?

[fol. 1286] A. Managerial and administrative with respect to the engineering and inspection work on all lines written by the Travelers group of companies.

Q. What is your relationship to the witness Thomas A. Murphy in this case?

A. He is one of a great many supervising engineers who are located strategically throughout the country, upon whom rests the supervisory activities with respect to the local engineers and inspectors.

Q. Under whose authority do they work and to whom do they report?

A. They are responsible to me as head of the division in which they are employed. There is one intermediary between them and me with respect to certain of their functions, relating largely to personnel matters.

Q. I believe you told me yesterday that there were 385 engineers or inspectors in the field and 120 clerks in the field and a total of 60 personnel in the Home Office, making up your division; is that correct?

A. That is correct, within one or two persons.

Q. How much of the time of these engineers in the field is spent in making inspections?

A. Might I ask if you mean by inspections the time required from the time they leave their place of business until they return to that or get to another place of inspection?

Q. Yes.

A. In that case my answer to you is approximately five-eight-s of their time.

Q. How much of their time is spent in preparing for [fol. 1287] inspections, determining after physical inspection what recommendations to make, writing the reports, and conferring with agents and Branch Office personnel, including claim personnel?

A. Three-eight-s of their time, approximately.

Q. Please say what number of inspections was made by Mr. Murphy and his assistants in Virginia in 1938 in the various lines of insurance and in the aggregate?

A. In the territory serviced by Mr. Murphy and the men responsible to him, all of whom are domiciled in Virginia, during the year 1938, in compensation they made 1,491 inspections; on public liability, the classification which we use for manufacturers' and contractors' liability, 70; general liability, which might be interpreted as being and known as O. L. & T. business, 611 (O. L. & T. meaning Owners', Landlords' and Tenants' liability); elevators 1,735 inspections; theatres, 62; automobile garages, 35; auto fleets, 449; plate glass, 53; burglary, 53; boiler and pressure vessels, 2,309; machinery, 789; no line—(that is the classification in which we throw engineers' time in the field when they call on agents and that sort of thing) 163; fire, 135; marine, 9; a total of 7,964 inspections.

Q. Please say what classification exists of your automobile liability locations and cars in Virginia under the supervision of Mr. Murphy or the Home Office?

A. I have a record which shows for the same territory six fleet locations involving 381 cars, the service on which fleets is handled under the direction of the Travelers Engineering and Inspection Division, Home Office Staff.

[fol. 1288] Q. Does Mr. Murphy, and his staff, conduct those inspections or do you have other people do it?

A. Mr. Murphy and his staff conduct those inspections and report directly to the Home Office on them.

Q. Give the others, please?

A. The other serviced fleets in Virginia total 162, involving 1,620 cars.

Q. When you speak of locations do you mean separate garaging points for units of the same fleet or separate fleets or sometimes one and sometimes the other?

A. Sometimes one and sometimes the other but mostly they are garage locations.

Q. How much of the automobile premiums of the Travelers are represented by fleet premiums?

A. Country-wide fleet premiums represent approximately 15½ percent of the automobile premiums.

Q. You don't have that figure for Virginia coverage, do you?

A. I do not.

Q. How much of the total country-wide automobile premiums are represented by garage premiums?

A. Four percent.

Q. You don't have that figure for Virginia either?

A. I do not.

Q. What are the number of elevators in the Virginia [fol. 1289] territory that are inspected quarterly?

A. I don't have that figure accumulated here. I have only a figure accumulated for all elevators that are inspected in the State of Virginia.

Q. How many are there?

A. 577 elevators. They average quarterly inspections.

Q. How many of these inspections are made before the company is on the risk by request of the agent or the Branch Office or the Home Office?

A. Country-wide we average 2500 applicant inspections per month.

Q. What is that in terms of percentage of total inspections?

A. Total inspections for 1938 were 435,500—very close to seven percent.

Q. How do these inspections vary in this regard: Are they all risks like power boilers or sawmill boilers or machinery risks on which the company will not go without previous inspections or are some of them that character and some of them of other characters?

A. Some of them are of one character and some of the other.

Q. What is the number of your miscellaneous public liability locations in Virginia?

A. 905.

Q. Do you know whether you have a mercantile chain store public liability risk covering in Virginia and produced outside of Virginia which is serviced by the company with 258 locations?

A. I do. We have a mercantile chain store assured which has 258 locations within the State of Virginia.

[fol. 1290] Q. Is that business produced outside of Virginia?

A. It was.

Q. Are these locations all in one or two cities or counties of Virginia, or are they broadcast over the State?

A. Scattered widely throughout the State.

Q. I believe you also have a mercantile chain store risk in Virginia that was produced outside of Virginia with 32 locations; is that correct?

A. That is correct.

Q. Are those locations scattered or all in one city?

A. They are not all in one city in the sense you have used it. They are scattered.

Q. That is a limited price type of chain store, isn't it?

A. Yes.

Q. How many objects are included among the classification of boiler and pressure vessels within Mr. Murphy's territory?

A. 1,148.

Q. How many machinery risks are in his territory?

A. 236.

Q. Suppose that the engineering department of a casualty company receives a communication from an agent, not the producer, asking for information about a risk or requesting the inspection of a risk, what course would the communication take under the practice of the companies?

A. I can speak only for the Travelers Insurance Company. If such a request would come to my personal attention I should refer it first to the agent or broker who has produced the line, requesting advice as to the disposition of such request.

[fol. 1291] Q. If I am an agent in Virginia and I ask for information about a risk from the Engineering Department or request an inspection and the Travelers is not already on that risk, then you would freely give me what I wanted, wouldn't you?

A. If we had the information in our possession we certainly would, but we would again refer that information to the broker through the local manager.

Q. In the case that I just assumed the Travelers is not on the risk but some other company has the risk. Would you refer that to the producer of the risk for that competing company or would you ignore him?

A. Certainly not.

Q. In a case where the risk is already being carried by your company, would you refer the communication to the true producer of it, notwithstanding that under the compulsion of some State law you knew at the time that you did this that the inquiring agent had received some substantial compensation because of his status as a countersigning agent?

A. We would certainly refer such requests to the producing agent or broker.

Q. After you refer it to the producer you would do nothing for the inquirer except to tell him you had gotten his letter and that you had referred it to the producer?

A. We would do nothing more than that.

[fol. 1292] Cross-examination.

By Mr. Staples:

Q. Mr. Burbank, how many inspectors do you have in Virginia?

A. My recollection is that there are seven all told.

Q. Does that include Mr. Murphy?

A. Including Mr. Murphy, I would say.

Q. What is a unit of inspection of a compensation risk?

A. Will you please define "unit of inspection" as you mean it?

Q. You said there were 1,491 inspections. Just what do you mean by an inspection?

A. An inspection as meant and recorded and reported to us means a visit to a location of an assured, made after the engineer has informed himself concerning information available in the files of his Branch Office about the risk with a view to determining the existing exposures at the location to possible accidental injuries. Such a survey, if you please, being made with the possession of the facts already mentioned in his mind, he may develop a knowledge of certain

conditions needing corrective action on the part of the assured.

Q. Do you know about the average amount of time consumed in one of these inspections of a Workmen's Compensation risk?

A. The average time for a compensation inspection country-wide is 1.8 hours out of the office, using time in the same sense that I defined it previously for inspections.

Q. In other words, it includes traveling time as well as [fol. 1293] actual inspection time?

A. That is right.

Q. Do you have any figures on actual inspection time average?

A. Yes, I can state from the figures before me that the average traveling time is 4/7 of an hour.

By Mr. Christian:

Q. May I ask whether these figures to which you referred relate to compensation risks or all inspections?

A. That figure which I just gave was compensation only.

By Mr. Staples:

Q. So that it would just be an average actual inspection time of a little bit over an hour, wouldn't it?

A. I have not made such computation as you have made and if that is mathematically correct I would subscribe to it.

Q. I haven't made it accurately, but subtract four-sevenths from eight-tenths and it shows very little left over. What would you call a fleet inspection?

A. In the first place, you must define "fleet". A fleet is a group of automobiles garaged together, as we use the term, and used in a common type of business, thus lending itself to group study and group instruction. An inspection of a fleet is usually made at a time when the majority of vehicles and drivers are at the garage location. A check-up of the vehicles with respect to their safety appliances is made at the time of the engineer's visit. Usually a discussion of facts which may have previously occurred takes [fol. 1294] place and constructive suggestions are made to the drivers for the development of safety and what we call defensive methods of operation of their vehicles.

Q. I believe you said you have about 577 elevators?

A. That is correct.

Q. And each elevator is supposed to be inspected quarterly?

A. I stated that they would average quarterly inspections. The reason, I might explain for your information, is that slow freight elevators, lifting perhaps two stories, represent a rather minor exposure and, where there is no statute governing, would be inspected perhaps only once a year, whereas passenger elevators, with a great exposure, are inspected monthly whether or not there is a statute requiring that.

Q. You say that you have 577 elevators. Is that the average throughout the year that you had in Virginia or just at one specific time?

A. That is the number of elevators we had on the books between the dates of November 15th and December 19, 1938, during which period these records were compiled from the field and forwarded to our Home Office.

Q. You don't know how closely that would reflect the average number you have throughout the year?

A. Yes, I do. There is very little change in the elevator coverage in the State of Virginia.

Q. You would then have substantially the same number during the entire year?

A. That is a fair assumption.

Q. If you had averaged a quarterly inspection of those [fol. 1295] 577 elevators, as I calculate it, you would have made 2,108 inspections, whereas I believe you said you made 1,735; isn't that true?

A. I don't recall making a statement as to the number of inspections we made on elevators. Yes, you are correct—1,735.

Q. Have you ever gotten any requests from a countersigning agent, who was not a producer, to render any service in your Engineering Department?

A. I have no personal information of any such requests. May I ask this question of you, sir? Rather than have a discrepancy of statement on inspections, may I submit that the actual number of inspections made is correct and that the other is a general statement which is intended only for our general guidance.

Q. You mean your elevator inspections?

A. Yes, because if inspections happen to fall due in January, sometimes they are made in December ahead of time

and sometimes they are made late and the tabulation department keeps its records actually on an inspected basis.

Q. But there would still have been four inspections each year on each elevator regardless of the particular time of year, wouldn't there?

A. No, that would vary from year to year depending on whether we picked them up in locations where the man was not immediately available.

Q. The average would be the same, wouldn't it?

A. We are talking about a point that I am merely discussing with you for the purpose of not being put in position of being discredited on a statement where we have facts in one case and a generalization in the other.

[fol. 1296] Q. I understood that you were just giving an estimate. You stated the average was about quarterly and I was calling your attention to the fact that they hadn't averaged that in Virginia. Coming back to the question you answered a moment ago, that you had never received any requests from a countersigning agent, who was not the producer, to render any engineering service, is it not true that the statement you made as to the practice in case such a situation did arise is purely theoretical and not based on any actual experience because you haven't had any such?

A. May I answer this question in this way, that the procedure of the Engineering and Inspection Division of the Travelers Insurance Company is so well defined that should any such request as you have mentioned arise it would be brought to the attention of someone in supervisory authority above the local supervisory engineer because of its unusual nature and because of its breaking a standard routine which exists.

Q. I understand that, but you never have had any actual experience along the line of a countersigning agent making any such request?

A. None has been brought to my attention. I merely pointed out that if such did arise it would be such an unusual procedure that it would probably get to me and certainly get to one of my assistants for consideration. In other words, he would not of his own initiative feel that he had authority to take any action on such a request.

Q. If a practice of that kind should develop in Virginia I suppose your company would take it up and give proper consideration to all of the various angles of the matter

and reach a determination as to what might be deemed proper practice, wouldn't it?

[fol. 1297] A. That is a hypothetical question which, to my way of thinking, is most unlikely to develop, if I may say so. Before it would become a practice it would call for most serious deliberation on the part of myself and my superiors in the Home Office before it could be built into our organization as a practice because it is so unbusinesslike from our point of view of operating.

Q. You never have had any situation of that kind to deal with at all, have you, under the past practices of your business?

A. No, we have not.

Q. And as to how you might deal with that situation you are not able to say until it arises and you have given the matter proper thought and consider all of the different angles, are you?

A. Only insofar as I can draw upon my business experience as a practical business man and as administrator of this division, and I make the statement that I have already made that such an unbusinesslike procedure would certainly call for serious deliberation and consideration.

Q. You would give it that deliberation and consideration?

A. Most assuredly.

Q. Your company does endeavor to make its practices conform to the general laws and conditions in the various states, does it not?

A. We always cooperate with the authorities and pride ourselves in our pleasant relations with them throughout the country.

[fol. 1298] THOMAS F. TARBELL, a witness on behalf of the plaintiffs in rebuttal, and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Will you kindly state your position and the location of your office and residence?

A. I am Actuary, Casualty Actuarial Department, Travelers Insurance Company, at its Home Office in Hartford, Connecticut; also Actuary of the Travelers Indemnity Company.

Q. How long have you held this position?

A. Since May 1, 1937.

Q. Before that I believe you were in a similar position for five years with the Aetna Company and before that for three years Actuary for the Connecticut Insurance Department and prior to that you worked in New York for eight years for the Mutual Life of New York. Is that correct?

A. That is correct.

Q. Do you have available a table showing the 1938 premiums on the casualty business of your companies covering in Virginia as a total and the parts of it?

A. Yes.

Q. And the parts of the premiums in the various lines?

A. Yes.

Q. Will you please file that with the reporter, marking it "Plaintiffs' Exhibit 39". I notice from this table it has 11,720 automobile liability policies but you also have in there 11,635 automobile property damage policies and 983 automobile collision policies. What is the aggregate of separate contracts involving these three separate classifications?

A. 11,720.

PLAINTIFFS' EXHIBIT 39

The Travelers Insurance Co. (Casualty Dept.) and the Travelers Indemnity Co.

Calendar Year 1938

State of Virginia

Line of Business	Policies Written(1) (Number)	Premiums Written (Amount)	Average Premium	Accidents Reported (Number)	Accident Frequency(2)	Claims Paid (Number)	Claim Frequency(2)
Auto Liability	11,720	421,283	36			455	3.9
Liability Other than Auto	1,716	108,378	63			241	14.0
Workmen's Compensation	805	314,922	391			Indemnity 661	82.1
						Medical 3,141	390.2
Plate Glass	598	16,535	28	Not Available	Not Available	212	35.5
Burglary and Theft	1,635	47,354	29			101	6.2
Steam Boiler	180	20,808	116			10	5.6
Machinery	10	12,918	1,292			8	80.0
	(16,664)						
Auto Property Damage	11,635	110,454	9			1,697	14.6
Auto Collision	983	18,560	19			66	6.7
Property Damage & Collision Other Than Auto	224	10,378	46			25	11.2
		1,081,590	65			6,617	39.7

(1) For Automobile—The number of policies involving the coverages under "Line of Business." For Property Damage and Collision other than Auto—the number of Liability other than Auto policies involving Property Damage and Collision coverage (each coverage computed separately).

(2) Frequencies are per 100 policies.

Average Automobile Premium 47.00

Average Liability, Property Damage and Collision Premium 69.00

Automobile Claim Frequency—All Coverages 18.9

Liability, Property Damage and Collision Claim Frequency 15.5

[fol. 1299] Q. What is the average premium on these 11,720 contracts?

A. $47—the nearest dollar.

Q. You have 1716 policies of liability other than automobile and 224 policies which are property damage and collision other than automobile. What is the total number of these policies?

A. 1,716.

Q. What is the average premium?

A. $69.

Q. Having reference to the total number of contracts shown in the table, would I be correct in saying that the total number is 16,664?

A. That is the total number of separate policies.

Q. What is the average premium on these 16,664 contracts?

A. $65.00.

Q. How many claims were made on these 16,664 contracts in the year 1938?

A. The number of claims paid in the year 1938 in the State of Virginia was 6,617.

Q. You have worked that out as a number per 100 separate contracts, I believe, and I will ask you to state it?

A. The number of claims paid per 100 separate contracts is 39.7.

Q. On these 11,720 automobile contracts, please say what was the total of 1938 claims in number paid?

[fol. 1300] A. 2,218.

Q. How many is that per 100 contracts?

A. That is 18.9.

Q. Please state the number of claims paid in 1938 on these 1,726 contracts of liability, other than automobile, and property damage and collision, other than automobile?

A. 265.

Q. And how many is that per 100 contracts?

A. 15.5.

Q. I notice under the column "Accidents reported" in Exhibit 39 and under the column "Accident Frequency" you have the words "not available." Does that mean that you do not have Virginia figures to go under these columns in 1938?

A. It means this, that the basic data from which that information could be compiled is available but it has not been

compiled. It is not available to me at the present time from any of the completed records that I have.

Q. Will you introduce a table similar to this Virginia table covering the whole territory of your companies for the calendar year 1938, but with the matter which should properly go under the two columns as to which Virginia data was not available inserted in the proper columns?

A. Yes, sir.

(This paper was filed and marked "Plaintiffs' Exhibit No. 40.-)

[fol. 1300-A]

PLAINTIFFS' EXHIBIT 40

The Travelers Insurance Co. (Casualty Dept.) and the Travelers Indemnity Co.

Calendar Year 1938

Total Business

Line of Business	Policies Written(1) (Number)	Premiums Written (Amount)	Average Premium	Accidents Reported (Number)	Accident Frequency(2)		Claims Paid (Number)	Claim Frequency(2)
Auto Liability	375,645	17,076,632	45	21,663	5.8		21,292	5.7
Liability Other than Auto	139,535	8,228,494	59	46,677	33.5		16,622	11.9
Workmen's Compensation	63,327	20,452,556	323	154,072	243.3	Indemnity	25,528	40.3
						Medical	128,049	202.2
Plate Glass	29,127	659,185	23	11,374	39.0		10,949	37.6
Burglary & Theft	76,120	2,219,897	29	5,006	6.6		4,120	5.4
Steam Boiler	7,856	1,194,697	152	685	8.7		396	5.0
Machinery	291	251,072	863	143	49.1		116	39.9
	(689,901)							
Auto Property Damage	356,767	4,591,461	13	106,211	29.8		57,768	16.2
Auto Collision	21,123	542,606	26	2,590	12.3		2,156	10.2
Property Damage & Collision Other Than Auto	11,372	542,997	48	4,070	35.8		2,505	22.0
		55,759,597	81	352,491	51.1		269,501	39.1

(1) For Automobile—The number of policies involving the coverages under "Line of Business."
For Property Damage and Collision other than Auto—the number of Liability other than Auto policies involving Property Damage and Collision coverage (each coverage computed separately).

(2) Frequencies are per 100 policies.

			Accident	Claim
Average Automobile Premium	59.00	Automobile Frequency—All Coverages	34.9	21.7
Average Liability, Property Damage and Collision Premium	63.00	Liability, Property Damage and Collision Frequency	36.4	13.7

[fol. 1301] Q. I notice you have in this table 375,645 automobile liability policies, 356,767 automobile property damage policies and 21,123 automobile collision policies. Am I right that that represents the net number of only 375,645 separate contracts?

A. Separate policies. That is correct.

Q. Similarly, are these figures of 139,535 and 11,372 opposite liability other than auto and also opposite property damage and collision other than auto to be combined into a net aggregate of only 139,535 contracts?

A. Yes, they represent 139,535 contracts.

Q. What is the average premium on the 375,645 automobile contracts?

A. $59.00.

Q. And the average premium on the 139,535 liability other than auto contracts?

A. $63.00.

Q. Have you computed the total number of separate contracts shown on Exhibit 40 after making the subtraction indicated as proper; if so, please state the total number?

A. Yes, the number is 689,901.

Q. What was the average premium on this number of net separate contracts?

A. $81.00.

Q. Please state the total 1938 paid claims on these 689,901 contracts?

A. The number of claims paid on the total business in 1938 was 269,501.

Q. And what was that per 100 separate contracts?

A. 39.1.

Q. Referring to the accidents reported on these 689,901 [fol. 1302] contracts, what was the total number of accidents reported?

A. The total number of accidents reported in 1938 was 352,491.

Q. What accident frequency does that represent per 100 contracts?

A. 51.1.

Q. Having reference to these 375,645 automobile contracts, what were the claims paid in number?

A. 81,216 is the number of automobile claims paid in 1938.

Q. How many is that per 100 contracts?

A. 21.7.

Q. As to the accidents reported on these 375,645 contracts, what was the total number?

A. The number of automobile accidents reported in 1938 was 130,464.

Q. And what was the accident frequency on those contracts?

A. 34.9 per 100.

Q. Speaking about these 139,535 liability and property damage collision policies other than auto, please state the number of claims paid?

A. The number of claims paid was 18,127, representing a claim frequency of 13.7 per 100. I speak of paid claims.

Q. Please state the number of accidents reported under these 139,535 policies and the accident frequency per 100 separate contracts?

A. The number of accidents reported was 50,747 and the accident frequency per 100 policies was 36.4.

Q. Please state the average duration of the contracts in each of these separate lines and also the mean average duration of the entire group of 689,901 contracts?

[fol. 1303] A. We compute the average durations by line as follows:

	Years
Automobile liability	1
Other liability	1.69
Compensation	1.02
Plate glass	1.49
Burglary	1.32
Steam boiler	2.57
Machinery	2.77
Auto property damage	1
Auto collision	1
Other property damage and collision	1.45

For the 689,901 policies we compute the average duration as about 14½ months.

Cross-examination.

By Mr. Staples:

Q. Do those averages of duration which you have just referred to take into account renewals or not?

A. Those are both new business and renewal policies.

Q. You say that an automobile liability policy averages one year. What do you mean by that? Is that the time that a policy is taken out for, just for one year?

A. That is right, and I might add that in this record every policy that is written for less than the year is counted as a year because we do not separate the policies into any unit [fol. 1304] less than a year. A short term policy, written for six months, would be counted for one year which, of course, would tend to have these figures slightly overstate the average duration.

Q. Those average figures that you have given are not intended to convey the idea that that is the length of time that you would have a contract with the assured on that particular coverage, is it?

A. Not the period of time that we might cover an assured. It is the period of time that the individual contract is in force.

Q. That wouldn't have any bearing at all then on the average time that you might have the coverage of your various assureds? In other words, a man might renew the contract ten times.

A. It would have no bearing on that point at all.

Q. Do you have figures showing the average amount that you paid out on each of these 6,617 claims in Virginia?

A. The average amount I have available but it has not been computed. I have the figures here and it would mean adding up some figures.

Q. The total number of automobile property damage policies for the year 1938 issued by your company on Virginia coverage was what number?

A. 11,635.

Q. What was the total amount paid out in claims on those policies?

A. The total amount paid out for automobile property damage claims was $58,435.

Q. That is an average of a little over $5 a policy, isn't it?

A. Yes, that is right.

Q. In your Exhibit No. 39 you show automobile liability policies written 11,720. Does that mean that there are that [fol. 1305] many automobiles covered or that there might be more automobiles covered than that?

A. There unquestionably are more automobiles covered because we count a policy only as one regardless of the number of automobiles that may be covered under the policy.

Q. It might cover a whole fleet and you would still count that as one policy?

A. That is correct.

Q. Your exhibit then does not contain information from which you can estimate the number of claims paid in proportion to the number of cars covered, does it?

A. It does not.

Redirect examination.

By Mr. Christian:

Q. Having reference to plaintiffs' Exhibit 39 and the 11,635 automobile property damage contracts, is my understanding correct that that classification is merely a coverage clause in that number of the 11,720 contracts classified as automobile liability?

A. Yes.

Q. Am I also correct in my understanding that an automobile property damage claim arises under such a coverage clause, in 1938, 14.6 times out of each 100 contracts?

A. That is correct.

Q. Would it be fair to say that that is about once in seven years of that protection that a claim of that sort arises under such a coverage policy?

[fol. 1306] A. Yes.

Q. Please give the amounts of dollars paid out on account of the various classifications of claims mentioned in the table in Exhibit 39 other than the amount which you have said was paid out in connection with the 1,697 automobile property damage claims, to the extent that you are able to do so?

A. You mentioned $59,434.68.

Q. I understood you to say that was the total paid out on those 1,697 property damage claims?

A. That is correct.

Q. I want you to do the same, if you are able to do it, with respect to each of the various lines shown on the table?

A. I will read them in order. This is the amount paid in claims in 1938 in the state of Virginia:

Automobile liability	$172,499
Liability other than automobile	44,757
Workmen's Compensation	146,270
Plate Glass	7,671
Burglary	8,853
Steam Boiler	2,341
Machinery	1,678
Automobile collision	11,268
Property damage and collision, other than auto	590

Q. In reference to that figure of $58,435, is it $5 per policy or $5 per claim?

A. The $5 refers to an average of $5 per policy, not per claim.

Q. And the average claim would be the product of dividing the $58,435 by 1,697 claims or what, if you have done that?

A. That is an average per claim of $34.

[fol. 1307] M. A. GESNER, a witness called on behalf of the plaintiffs in rebuttal and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. State your name and occupation?

A. M. A. Gesner; I am Vice-President and Director of the H. W. Schaefer Company, 39 Broadway, New York City. I might mention Mr. Schaefer is the President of the National Association of Insurance Brokers. My particular duty is in handling the casualty department of that office.

Q. How long have you been connected with the Schaefer Company?

A. Three years.

Q. How old is that firm?

A. It will be twenty-nine years this May.

Q. They have been doing business all that time right here in the same town?

A. Yes, sir.

Q. Where were you connected before you came with this firm and in what capacity?

A. I was assistant manager of the United States Fidelity & Guaranty Company, New York office, in charge of all of the casualty departments for five years prior to that and for eleven years prior to that I was Assistant to the Manager of the Compensation and Liability Department of the National Bureau of Casualty & Surety Underwriters, working principally at the New York office but also at various branch offices doing inspection and rating work.

[fol. 1308] Q. Will you please indicate on the record the number of partners or part owners of your firm and the number of personnel connected with it which you would not include in the characterization of partners or part owners?

A. Our firm is a corporation and it has a president and three vice-presidents, treasurer and secretary and assistant secretary. I believe all of the officers hold stock in the corporation, Mr. Schaefer, of course, being the principal stockholder. The other personnel consists of the clerical force, secretaries, stenographers, office help, file clerks, telephone operators, and our total force, I believe, is eighteen at the present time.

Q. Does that constitute an exhaustive enumeration of your force or do you have any department heads that wouldn't be called clerical people strictly, or engineers or inspectors?

A. Each department has at its head an officer of the company.

Q. Do you have any technical assistance aside from that furnished by the officers?

A. No, we do not.

Q. Without prying too much into your affairs, to the extent that you feel at liberty to speak of your volume of premium production, I would be glad to have that on the record?

A. We prefer not to give any actual figures but I would be willing to say that over the past fifteen years our premium volume has average- in excess of a million dollars a year.

Q. Will you say your firm is a large one or a small one as [fol. 1309] such firms go in New York and its environments?

A. I suppose we would be classed as a fairly large office. We are by no means as large as many of the brokerage offices but we are larger than a good many of the brokers in New York City.

[fol. 1310] Q. Will you please approximate the distribution of your premiums in percentages?

A. I would say that our casualty business is approximately fifty percent of our total and I would have to make quite a rough guess on the other lines. I would say it is probably divided more or less equally, the balance between marine, fire, fidelity and surety, and life and accident.

Q. In the casualty and fidelity and surety lines do you limit yourselves to particular coverages from particular exposures or do you attempt to provide for your clients all needed coverages against all exposures.

A. All exposures. We don't restrict ourselves or specialize in any particular form of insurance.

Q. In what states other than New York do these contracts cover?

A. Is it permissible for me to look at a list that I jotted down at lunch? It is not complete but, at least, it is accurate as to those states that I will name: Missouri, District of Columbia, Florida, Georgia, Pennsylvania, Delaware, Maryland, Illinois, Indiana, Alabama, Michigan, Minnesota, Ohio, Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut, New Jersey, California, Texas, Wisconsin, Mississippi, Louisiana. We also handle foreign coverages in the Bahama Islands and South America. That is an accurate list; that is, we have business at the present time in those states. How many more states I wouldn't know without going through our records and I haven't done that. We also have risks which operate fleets of cars through many states.

Q. You mean many not in that list?

A. Yes, many not in that list.

Q. Could you make a statement of your impression as to the part of your business that covers outside of the metro- [fol. 1311] politan area in premium volume and the part that covers inside of the metropoliton area?

A. I can say with certainty that more than fifty percent is outside of the metropolitan area. How much more, I don't know.

Q. I want to get an idea of whether in these multiple locations, scattered among the states, the risks that are produced around here and cover elsewhere are usually experience rated or equity rated or whether they are usually rated by manual. I know there are some closed states and some open states.

A. In practically all cases they are subject to either experience or equity rating, some form of special rating other than manual rates.

Q. I believe there are a good many states that permit the retrospective plan and a good many that do not, aren't there?

A. Yes, there are.

Q. Could you say some of the lines of business in which these various assureds are engaged?

A. We have a good many contractors on construction work of all classes, we have railroads, manufacturing, structural steel plants, mercantile department stores and it is a general class. There isn't any one type that we specialize in.

Q. Do you usually place your business with a branch office or general agency?

A. With most of the companies that we do business we are doing business through branch offices. There are one or two important exceptions to that. We deal with a large number of companies.

Q. You don't have any particular preferences among the companies?

A. I wouldn't say we have preferences but our custom [fol. 1312] would be to concentrate the insurance of one risk, as far as possible, in the same company and there are certain risks which we consider one company better than another to handle and service.

Q. I could imagine that the particular company having a large number of risks of a certain type in its claim and inspection personnel would become better equipped through experience, to handle additional risks of that type? Would that be so?

A. That is very true. I can give you instances if you are interested.

Q. Would it also be fair to say that you acquire a familiarity as to what you might call underwriting peculiarities of the various companies so that you are able at times to think that certain risks will receive a warmer reception and more favorable reception from the underwriting department of one company than they might from the underwriting department of another company?

A. Yes, we do. We know in actual practice that certain underwriters believe that certain types of risks are desirable, whereas underwriters of other companies try to avoid assuming liability for those risks and we naturally go to the underwriter who thinks that is a good class of business because he will be more patient and lenient in the handling of the risk than an underwriter who didn't want it in the first place.

Q. Am I right that you acquire that knowledge by long association with these fellows and dealings with them and hearing them talk?

A. That is true.

Q. When you were in this position with the branch office in New York of the U. S. F. & G. were you constantly being brought in touch with producers and general agents and company officers so as to acquire reasonably intimate knowledge of those people?

[fol. 1313] A. Yes. In my position it was necessary to deal with the brokers and agents in the territory serviced by that office and I naturally learned from those brokers that certain companies wouldn't write a certain class of business, which I might think was a good class of business, and be willing to write. I would also learn of other companies that would write lines that I call undesirable and wouldn't write and we naturally have committee meetings of company underwriters and the state rating boards and bureaus where you learn the views of other company men.

Q. Has it been your experience that when you attempt to make a survey of the exposures of an assured, the insurance manager of that insured or its treasurer, or whoever may have to do with its insurance affairs, will let any Tom, Dick or Harry who comes along have the knowledge to make an effective survey?

A. It is very difficult to get that information until you either have been presented by an executive of the firm or in some other manner have won the confidence of the insurance manager.

Q. When you submit a program, after such a survey, do you indicate in the proposal the companies in which you plan to place the various kinds of coverages that make up the program or do you leave that to be settled later when the program in general is approved?

A. We do not name the companies.

Q. Do you go out and make certain you can get the coverages which you are going to propose in the program and at the price that you propose before you submit the program?

A. If there is any doubt in our mind as to our ability to carry out that program, we would then sound out companies to make sure that we could carry it out. In most instances it would not be necessary to discuss those matters with the [fol. 1314] companies first because we have sufficient knowledge of the business to know what can be done in the market.

Q. Then when the assured accepts your program does he ordinarily specify the companies to be selected?

A. It isn't either one of the two. If our program were otherwise acceptable, we would be asked the names of the companies that we proposed to use, and we would have to satisfy the assured that those companies were capable of handling it and their financial standing and organization were adequate to render all facilities necessary.

Q. Do you find as rule that your recommendation of the company is accepted?

A. In practically all cases our suggestion is accepted but there are certain exceptions to that where, for other business reasons, an assured will want to have a particular company favored if he can do it without having it cost him more money.

Q. Some of the witnesses said, I believe, that financial institutions like banks often want to distribute their business among their depositors in some relation to the balances that are carried with them and some one else said that contractors, even though they were changing their broker or producer, might want to suggest to the new men keeping the same company that they have been getting their bonds from before. You concur with those two statements?

A. That is very true.

Q. They are examples of unusual instances that you refer to?

A. That is right. As another example, contractors are frequently given work to do by insurance companies, either to put up buildings for companies or to take over unfinished contracts where another contractor has defaulted under his [fol. 1315] bond. That insurance company favors a particular contractor with the completion of the work and it frequently happens that the contractor will want to reciprocate and give his business to that company.

Q. It seems to be a general notion, intimated, I might say, by counsel at times in this case, that all fleet risks have got to have a domicile in particular states or localities. In your experience has that been true or are they, in some cases, like little bugs running around the country?

A. Of course, they all have a domicile but not necessarily in every state that they operate in.

Q. You mentioned to me the other day a risk you had country-wide for a confectionery distributor of a specialty that had cars going through Virginia. Do those cars have their principal use or principal garage in Virginia?

A. No, not at all.

Q. Where might they be from just as well?

A. They would be serviced from some principal city. In that particular risk there are half a dozen field offices where there are branch managers. He has charge of a large force of salesmen who service the state in which that office is located, and also surrounding states.

Q. And those cars then, even though they were operating, we will say, in North Carolina and Virginia and West Virginia most of their time, might have their principal garaging place and headquarters, when a salesman is back home with his wife and family, up in Baltimore; is that right?

A. That is possible.

Q. Do you ordinarily change the risk at renewal time or in the middle of the period from one company to another?

A. That does not happen very frequently with our office. When we place a line we have in mind keeping it with that [fol. 1316] company as long as we control that risk unless some unexpected development takes place such as a change in the underwriting policy or restriction in the company's facilities—some unusual event. It would be unusual to switch the business. We don't make a practice of that.

Q. When you do make a shift like that do you explain to the assured why you are doing it, as a rule, or just say nothing?

A. We explain it to the assured in the majority of cases.

Q. Suppose you had your risk with one of these good companies and everything is going along all right except that it served notice on you that hereafter you can only get half of the producer's commission because it has to give the other half of your commission to the countersigning agent in the coverage locality and, instead of digging down in its pocket to pay those fees in the localities, it wants to take them out of your pocket. Would you have any hesitancy in telling your assured that that has occurred and, for that reason, you want the company changed or would you freely disclose that that was so and that you want to change the company for that reason?

A. We wouldn't have any hesitancy in telling our customer why we wanted to transfer an account if it were for that reason.

Q. Would that be based on the theory that you would place it where there was the biggest commission or would there be any economic reason why you should not be content with half of the commission hitherto enjoyed?

A. It costs us more than half of our commission for our service organization. That is exclusive of the amount that we have to pay to our salesmen or producers, as we term them. So from a practical standpoint we wouldn't operate if we were reduced to half of our present commissions.

Q. So you think rather than it being a question of whether [fol. 1317] that is a proper thing for you to do, it would be more a question of your having to do it if you are going to stay in business?

A. It would be a necessity.

Q. In a case like that suppose your assured replied to you that his understanding was that in these localities in question these countersigning agents were going to take over a whole lot of your responsibility and what had hitherto been your duties and that before they countersigned those policies they were going to contact the assured and examine into his affairs and find out his exposures and that they were going to carefully check up those policies to see whether they were the proper and right kind of policies for that assured to have and after the policies were placed they were going to give the assured all the service you have been giving him through the life of the policy, and each of those countersigners was going to be kind of an additional insurance counsel to that assured in his particular locality? Would not that satisfy your misgivings about it and make you feel—"Well, if these fellows are going to do all that, I can avoid so much that I can get along on half of the commission"?

A. We wouldn't feel that way at all. In the first place, I don't believe any assured would put up that proposition to us because we were selected in the first instance because the assured felt that we had the type of organization that could give him the insurance service that he wants and, in the second place, we would not be willing to give up any part of our functions to any local agent. We don't believe they are capable of performing all the functions that we perform and we wouldn't give any part of them up. It would hinder our ability to render the type of service that we offer to our clients.

[fol. 1318] Q. Do you mean to be understood then as asserting to the Court that there is a special relationship of trust and confidence between your assured and your firm so that they wouldn't be equally content with the services of agents all over the country?

A. I certainly do.

Q. Do you mean to assert that you think your assureds would give you information which, if you were unfaithful to them and passed it on to their competitors, would be injurious to them and they would trust you to keep that private?

A. They do.

Q. And your point is that you don't think they would do that to all local agents in the country?

A. I feel sure that they wouldn't.

Q. What has been your experience with reference to the necessity of your going out into the field to these locations of coverage to get physical contact with conditions?

A. When we insure a risk, whether it is in our own locality or in another state, another section of the country, after we arrange the insurance and check the policy as to coverage, rates, premiums, and deliver that policy, we then have an arrangement with the companies whereby we receive copies of their inspection reports, we receive copies of all accident reports from the assured and we receive information from the claim department of the insurance company as to the progress of the handling of each claim, including reserves on cases that are not settled, and the amounts paid on cases that are settled. We keep a complete record on losses so that we are in a position to check the experience rating data on loss ratio. We also receive the original audits in all cases and, in many cases, the work sheet from which the auditor builds up his audit and we [fol. 1319] check those so that we can be in a position to determine whether the experience rating for the future is based on proper information. When a particularly excessive accident frequency is revealed and the cause for that is not brought out from the company's inspection reports or the loss reports, we investigate that ourselves by going to the scene of the operations, if that is necessary, to determine the cause of the trouble and to attempt to effect a cure. We have had to do that in numerous cases in states a good distance from New York, for instance, South Carolina, Florida, Indiana, Ohio. The only time when we associate ourselves with a local agent or broker in the distant city is when the officials of the assured who handle the insurance are located at some point not easily accessible to New York. For instance, we had a case come up in California a few months ago where the executives who would be handling the insurance would be located in California. We immediately negotiated with a California insurance broker who we knew maintained an organization and could handle that work out in California and made our own arrangements with him on the division of the commission.

That type of case is the only type where we ever feel it necessary to associate ourselves with anyone else.

Q. The witness Tabb in this case discussed on the record an Imperial Tobacco fleet risk where he had a general agent's commission paid to him and Marsh & McLennan had the producer's commission paid to them. That happens to be a company that has a beautiful and substantial building at Fifth and Franklin Streets in Richmond and its two chief American officers, as far as I know and believe (and perhaps more than that number) live in Richmond. Would that be an illustration of what you are talking about, that if you got that business like Marsh & McLennan did you might take some Richmond agent in as they have taken [fol. 1320] Tabb in to keep up that contact?

A. Yes, we would in such a case. Those cases are infrequent. Ordinarily insurance is placed in the city where the executives are located, whether it be Chicago or New York or San Francisco or Richmond.

Q. In the same way, I suppose if a brokerage firm carried the exposures of the Pennsylvania Railroad, with its large interest in the Norfolk & Western and the Norfolk & Western, because of that good recommendation of the firm by the Pennsylvania, would place its exposures with that New York or Philadelphia brokerage house, it might be reasonable for an agent in Roanoke, Virginia, to be associated in that, because of the principal office of the Norfolk & Western and its principal executives being there?

A. That might be, although our experience with railroads, in such a case, is that the principal railroad would determine the policy on insurance and would actually handle the placing of the insurance.

Q. What has been your experience in what happens when countersigning agents around the country learn about a concern's exposures or one or more of them being asked to countersign policies and they use the information thus gleaned as a vehicle for intelligent solicitation of their business, either for themselves to the exclusion of the producer, or under some kind of partnership arrangement that they are going to help the producer by carrying forward the joint interests of the producer and themselves. What course do such proposals of assistance or advice take as a rule, after they are made to the local plant manager of the assured?

A. I was going to say that that wouldn't happen frequently because in most cases the people who purchase and arrange for the insurance would not be located where the countersigning agent is.

[fol. 1321] Q. But he could go over to the factory superintendent and say, "Look here, your wife and mine belong to the same clubs and play bridge together and you and I are good friends and you have become a permanent resident of Richmond, and I want to have some of your business," and suppose the plant manager said to him, "I don't handle the insurance business," might not he still say, "I saw the other day a policy covering some of your exposures here and I didn't think much of it," and point out mistakes in it and try to interest that man to give him some of it?

A. If that happened the local plant manager of the assured would take it up with the head office, or whatever office had the handling of the insurance, and bring out any so-called deficiencies in the contracts or suggest that a local agent be given a part of the business or all of it.

Q. And then what would a man up here do with it when he got that communication, as a rule?

A. He would normally discuss it with his insurance manager or advisor, whether that be a broker or an agent.

Q. Would it be your idea in a case like that that he would do like he would with a lawyer, either follow that producer's advice or get another producer, or would he go on and do what he wanted to and keep his relationship with the producer?

A. In our experience in such a case the assured would either follow the advice of his present insurance advisor or get another insurance advisor. When I say "insurance advisor," I mean either a broker or an agent because the business isn't necessarily placed through brokers.

Q. What is the official designation, as a rule, of the assured's officer or employee who determines its insurance policies or carries out the policies determined by the Board of Directors?

[fol. 1322] A. I would say ordinarily he is the insurance manager. He may be the comptroller or treasurer or assistant treasurer.

Cross-examination.

By Mr. Staples:

Q. Mr. Gesner, are you a member of the National Association of Insurance Brokers?

A. I will have to explain that. The National Association of Insurance Brokers is not an individual membership. It is comprised of local brokerage associations all over the United States. In other words, the Insurance Brokers Association of New York takes membership in the National Association of Insurance Brokers. The California Society of Insurance Brokers takes membership in the National Association. It is not an individual association.

Q. How many individual associations are there in it?

A. I would have to guess. There are three or four associations here in the metropolitan area that belong to the National Association. I know there is one in Boston, one in Chicago, at least one in California, one in St. Louis and one in Philadelphia. Whether that is a complete list, I don't know. Normally we brokers are only in the larger cities like New York, Philadelphia, Chicago, San Francisco and Boston.

Q. What was the nature of your duties with the National Bureau of Casualty & Surety Underwriters?

A. They varied over that eleven years. I started in the inspection and engineering division and learned how to inspect manufacturing plants, apply the industrial compensation schedule rating plan and to determine the proper classification of such risks. Later on I was in the rating [fol. 1323] department, determining the schedule adjusted rates from the inspectors' reports by applying various formulas in that schedule rating plan and in the experience rating of risks, both interstate and intrastate. I worked in the Chicago branch doing rating work, in the Minneapolis branch and at the Home Office in New York City. Later I was transferred to what was known as the Compensation and Liability Department where we had to promulgate rates for individual risks, risks which either weren't properly classified from any classification contained in the manual or which fell under a classification for which no rate was given. Those are what we call A rated risks, the symbol A in lieu of a rate and the risk must be referred to the Bureau for establishment of the proper rate. They also worked

on the revision and establishment of the manual rates in general by classification, setting up new classifications and revising the manual rate periodically, based on experience.

Q. There are two or three different kinds of rates, aren't there—one the standard manual rate and the other equity ratings and experience ratings?

A. That is correct.

Q. What legal authority, if any, does this Bureau have as to the fixing of rates?

A. In most states it has no legal standing. I don't know that I am qualified to give you a very complete answer to that. I do know that in the State of New York it is the official filing agent for its group of member companies with the State Insurance Department. It has an official standing for those companies and in a number of other states it is recognized as the official filing agent for its membership. I don't think it has any legal standing as a state rating bureau would.

Q. You don't know of any state law that makes it mandatory to follow the rates prescribed by that bureau, do you? [fol. 1324] A. Not a state law. I do know that the insurance commissioners have prescribed in certain states, such as Maryland, Maine, New Hampshire and Vermont that all classes of carriers must conform to the rates promulgated by the National Bureau in those states. That would include mutual carriers, although they don't have membership in the National Bureau as such. They must subscribe to those rates. That may be true in other states but I can't think of any offhand. I have been out of touch with that for a few years.

Q. There is no compulsion that you know of to compel the companies to conform to the rates of that Bureau in what are called these large interstate blanket policies, is there?

A. No, the only compulsion would be as to those particular states such as I named. They would have to conform to the rates promulgated in those states but there would be no compulsion to conform to the Bureau's rates in other states in which the same assured might be conducting operations. Is that what you mean?

Q. Yes. If an insurance company is making a broker a price on a coverage that extends, we will say, over twenty-five or thirty states, there will probably be only three or

four of those states that have any law of the kind you speak of, wouldn't there?

A. It would depend on the line of insurance. If it is compensation, practically all states have some type of bureau to which all companies must subscribe. If it is miscellaneous public liability or automobile insurance, there are very few states where the law would compel a company to subscribe to certain bureau rates.

Q. When the insurance company makes a price, as I believe Mr. Thomas, one of the brokers here in New York, testified was customary on a sort of an aggregate of all of these various coverages which would be submitted in [fol. 1325] one of your programs, they might, in trying to arrive at the price, apparently follow prescribed rates in the states which have compulsory rates or regulations, but when they go to make up the whole price for the coverage they could put in such amounts as they saw fit in these other states that do not have any rate requirements, couldn't they?

A. I believe they could.

Q. In that way isn't it true that if the company wants to do it they can practically nullify the rates in these particular states which do have fixed rates by making a total price composed of probably ridiculously low items in states where it is permissible, and the result would be the same as if there were no rates fixed in any of the states? Isn't that true?

A. Well, they definitely have to charge in their policies the prescribed premium for all states where there are rate regulations. If you mean that because they do that they charge a lower premium in certain other states than they might if they didn't have any legal restrictions, I suppose that is true.

Q. I mean that the result would be something like that store which puts on what they call a "penny sale." They charge you twenty-five cents for the first article and one cent for the second one. The result is, of course, that you are getting two articles for twenty-six cents, at thirteen cents apiece, and what they pretend to be charging you for the first article is really more or less immaterial. What you are looking at is that you are getting the two articles for twenty-six cents and it doesn't make any difference whether they say you are paying twenty-five cents for the first and one cent for the second?

A. Yes, an underwriter's concern would be with the total premium that he gets, whether it is sufficient to cover the [fol. 1326] risk, and if it is he wouldn't care particularly how that premium is distributed between states if he gets a sufficient premium to take care of the entire risk.

Q. In other words, the broker is not interested in the particular items that the insurance company puts in, that is the items of premium charge for the various States? What he looks at is the net result of the whole combined risk, isn't it, insofar as the cost is concerned?

A. Generally, yes, but we always have in mind that the break-down in that premium would have some relation to equity because under such a program, if an assured cancelled or discontinued operations in a state where a very small premium had been charged, he wouldn't get an equitable return premium. So brokers do have to keep those facts in mind.

Q. That would be about the only case in which it would be at all material?

A. Yes. Otherwise it wouldn't be material to us. We are trying to purchase insurance for a sum of money and the bookkeeping methods followed by the companies would be of no concern or interest to us.

Q. And that consideration wouldn't be material to a company that had no idea of discontinuing its operations in a state, would it?

A. No.

Q. Does your office follow the custom of combining all different types of risks that an assured would have, such as fire, casualty, surety and fidelity, all in one contract with the insurance company?

A. No, not in one contract. We try, as far as possible, to place all the different lines of insurance of a customer with the same underwriter.

Q. And you get a joint price on the whole, don't you, if you have a program embracing fire, casualty, fidelity, surety and the various risks?

A. No, we do not.

[fol. 1327] Q. Wouldn't you get a bid from the Insurance Company on what the company would take the whole risk for and probably also split it up into what they would take each separate risk for?

A. The same company can't write fire insurance, for instance. You would have to leave that out. Many of the

companies that write casualty don't write surety but, when we get a proposal, all of the casualty lines might be in the same quotation. For instance, the workmen's compensation, automobile and public liability might be embodied in one quotation with a break-down between the various lines of insurance set forth.

Q. Wouldn't the Travelers, with its associated group, be able to handle the whole business?

A. They don't write bonds, in the first place. They don't write surety bonds.

Q. Do they handle all of it except that?

A. I don't know whether they write marine. We don't go as far as you have indicated in concentrating all lines with a given underwriter.

Q. You don't follow that practice in your office?

A. No, not to that extent. We concentrate all of the fire lines, as far as we can, among the same group. It has to be spread because of the retentions of each company and I would always attempt to place the compensation and the automobile and public liability with the same company but we don't go to the extent of trying to get the fire insurance in with an affiliated fire company or the marine insurance with an affiliated marine company. We don't go to that extent in concentrating our business because you have to deal with different underwriters. A man who underwrites workmen's compensation doesn't underwrite fire or marine. You would be dealing with entirely different branches of a company.

Q. Take a concern like the Travelers and its affiliated [fol. 1328] companies; would there be anything impracticable about asking that group to make you a bid on the fire and casualty and what other lines that group can handle?

A. I don't see anything impractical about it. It just doesn't happen with our type of organization. I don't handle the fire insurance and another man doesn't handle the compensation and liability or marine or burglary or any of the other lines. They are handled in different departments and each department has its own group of underwriters that that department head thinks are the best for his needs.

Q. You gave a list of states in which you have risks for your clients. Did you mention Virginia or not?

A. No, I did not. At the present time we haven't any risk that is domiciled in Virginia. I mean any kind of

plant or construction job or office. We have certain risks whose salesmen travel through that state in the course of their business but that is as close as we can come to that state at the present moment. We have large contractors who may work in any state and may get a contract in Virginia tomorrow or may not get any work there for ten years. We can't tell what states we will be servicing a year from now. It depends on our customers and where they do work.

Q. Do you have a non-resident broker's license in Virginia?

A. I don't believe we have at the present time. We have in all states where we have business and where such a license is required.

Q. Do many states require that license, do you know?

A. I think we have perhaps ten at the present time. I don't handle the licensing. Our Secretary does that. I know I sign a good many checks around the first of each year to various state officials.

[fol. 1329] Q. Have you ever had any extensive casualty business in Virginia through your office?

A. Not during my service with the company.

Q. How would you go about trying to decide what casualty company would be in the best position to serve a risk in Virginia?

A. It would depend upon the type of risk.

Q. Say an automobile fleet risk or workmen's compensation risk or almost any kind of risk?

A. When I say the type of risk I have in mind, if it were a steel construction job, that would be a particular company that we have found has a far-flung organization and has had a good deal of experience with such risks.

Q. I believe you mentioned that you thought the Travelers had the best organization of that kind?

A. That is our opinion and that is the place where we normally go when we have such a risk to handle.

Q. Isn't it true that the prospective merit of the service organizations in the different states might vary with the different companies? One might have the best organization in Virginia and another might have the best in California?

A. We don't find it so. We never have had that experience. It is true, if you are speaking of fleet risks or chain store risks, that certain companies, even though they might be well qualified here in New York, wouldn't have a suffi-

cient organization in all the little towns through all the states in the country. That is something that we have to consider with each individual risk, whether the company has claim representatives and inspectors with a sufficient volume of business in that territoty to give you prompt and [fol. 1330] efficient service.

Q. You don't make any investigation of the organization one of these companies might have in any particular state, do you? You just rely on the general reputation?

A. We rely on our past experience in dealing with that company in states other than New York. We have had business in practically all states.

Q. If you had a program which you have designed for one of your prospective assureds, would you present the same type of risk to more than one insurance company or confine yourself to one?

A. We frequently present it to more than one if it is competitive.

Q. The same identical risk?

A. Yes, the same risk or proposal. If it is a risk which lends itself to equity rating where it isn't a matter of taking certain rates that are prescribed in advance, we would go to a group of companies, any one of which we feel is able to service that risk, and get a quotation from them.

Q. What is the purpose of doing that? Is it to try to get the cheapest rate for your client?

A. Yes, that is our duty as insurance counsellors or advisors, to first select the company that can give proper service and, secondly, to see that the policy coverage is correct and, third, to see that the price is as good as can be had in a company that meets the first two qualifications.

Q. So then these insurance companies are in a competitive position as between themselves as to which one of them is to get this business?

A. Yes.

Q. Isn't it frequently also true that several brokers will be working on a program, each of his own, for the same assured?

[fol. 1331] A. That is true.

Q. And they also more or less pit the companies against one another to reduce the rates as much as possible?

A. That is true.

Q. Generally speaking, assuming that the insurance companies are of equal standing, does the broker who gets the best price generally get the business?

A. Generally speaking, yes.

Q. So that this business really goes more or less on a competitive basis among the brokers and is not necessarily given to a broker on account of any great amount of confidence that the assured might feel in that particular broker? He probably feels enough confidence in all of them to give it to whatever one gets the best price for him?

A. In the first instance, before a broker is brought in and permitted to have sufficient information to obtain the quotation, there has been a weeding out. They don't indiscriminately give all the brokers in the City of New York a chance to quote.

Q. If they did they would be worried to death?

A. There is a selection, in the first place. A large assured will decide that they are going to let half a dozen, usually large, brokers, if it is a large risk, bid on the insurance and those are firms, any one of which the assured would be willing to place his insurance with and any firm that he didn't have confidence in wouldn't be given the information to go out and get a quotation. We can't get in and get information to quote on these risks that we might want to get unless we are sufficiently well known and well introduced. Otherwise we will never reach a point where we can make a quotation.

[fol. 1332] Q. But well established brokers, even in a city as large as New York, are pretty well known around among the large assureds, aren't they?

A. Fairly well.

Q. Do these brokers take up much time of the assured in getting this information on which to formulate their programs?

A. They usually do. If they are going to do any kind of a job they have to.

Q. And that is the reason, naturally, why the assured wouldn't want to have too many brokers around, taking up the time of his employees?

A. That is right. Frequently they will only have two brokers, and sometimes only one, sound out the markets because it involves a great duplication of material that has to be distributed.

Q. What do you mean by "sound out the market?"

A. When I say "market" I mean the insurance markets, the various underwriters.

Q. What they are willing to take the risk for?

A. That is what we call the market. When we say there isn't any market for a certain type of business, we mean that none of the companies care for that class.

Q. By "market" you also mean the company that is willing to take it at the all-around best and most attractive price for the risk; is that correct?

A. That is right. It must be a company, as I said before, that has an organization that can service that risk in its particular locality. There must be sufficient financial stability so that we have no hesitancy in placing the business in that company.

Q. Is there any standard commission rate for brokers in [fol. 1333] New York in these various lines of risks where the premiums are arrived at through this experience and equity rating system?

A. There is a standard rate insofar as experience rated risks are concerned.

Q. What is the standard rate on that?

A. It varies by line of insurance. On workmen's compensation in New York, for instance, the rate is eight and one-half percent. In New Jersey it is ten percent and in most states it is ten percent.

Q. What is the rate on a manual risk of that same kind?

A. That is the rate of commission. On fire insurance it varies by type of risk. The average for a broker, I would say, would be in the neighborhood of twelve to twelve and one-half percent. It fluctuates between ten and fifteen percent generally.

Q. On what type of risk?

A. On fire insurance. On automobile insurance it is fifteen percent and in certain states as high as seventeen and one-half percent.

Q. If the Acquisition Cost Conference has allowed for a producer's commission twenty-five percent, we will say, in automobile liability cases, what becomes of that extra part that the broker doesn't get?

A. I don't know that I get your question.

Q. You are familiar with the Acquisition Cost Conference, aren't you?

A. Yes, generally speaking.

Q. That Conference has agreed on certain standards of producer's commissions?

A. Yes, that is right.

Q. And I believe that in Virginia the State Corporation Commission, in arriving at the premium rate, puts in a factor that takes care of that?

[fol. 1334] A. That is right.

Q. That factor being allowed in the premium rate and the broker not getting it at all, I would like to know what becomes of the balance of it?

A. Well, if there were such a case where the company pays less than the prescribed rates, the balance would go to the company.

Q. The standard rate of fire insurance producer's commission, throughout the country, is generally twenty percent, isn't it?

A. That must be the total so-called acquisition cost. Perhaps I had better explain that. The total acquisition cost on compensation is fifteen percent. That is divided between brokerage commission and what they call field supervision, their branch office expense or general agency, if the company operates through a general agent instead of a branch office.

Q. What part of that would you get?

A. We would get ten and the branch office, for its expenses, would get five and the general agent for its expenses would get five. The two together make up the total acquisition which is set forth in the Acquisition Cost rules.

Q. If you get from ten to twelve percent of a fire insurance premium and the general rate paid to a producing agent in Virginia is twenty percent, then you think the other eight or ten percent would go into the branch office?

A. Yes, to maintain the branch office. That is the money that is used to maintain the branch office or that the general agent uses to maintain his office.

Q. Has there been any compilation of figures published on any particular company as to the proper loading of branch office expense?

[fol. 1335] A. I haven't seen any recently but I know that in general on casualty lines the branch office expense has equalled the seven and one-half percent for branch office or general agency expense. I haven't made any study of that recently because it no longer is a matter of great concern to me. It was when I was a company employee and I fol-

lowed it very closely at that time as to whether we were keeping within our allowed percentage in operating our branch.

Q. So the company just considers whatever difference there is between the producer's commission which is allowed in the standard rate and whatever they pay the broker as going to Branch Office expenses, do they?

A. Branch Office or General Agent. Some companies operate through Branch Offices and others prefer to operate through general agencies.

Q. If they operate through a general agent he operates on a commission basis, doesn't he?

A. That is his commission, the part that would normally go to the Branch Office. I believe there are statistics which show whether that amount is sufficient or excessive for the operation of Branch Offices.

Q. Do the fire companies have branch offices?

A. Yes, some do.

Q. You don't know of any company that has in Virginia, do you?

A. No. I would think that most of them would operate through general agencies in a State like Virginia. The branch offices, generally speaking, are confined to the large metropolitan areas—Boston, Chicago, Baltimore, and cities of that type.

Q. So that the difference between the producer's commission which would be allowed under a Virginia rate structure [fol. 1336] on a contract negotiated in New York and what the company gets out of that commission factor of the premium goes to maintain the New York Branch Office, does it not?

A. Yes, I would think that is generally true, although they don't call it that item. They call it field supervision expense which means it is the expense of the field employees that service that business.

Q. You don't mean the Engineering Department, do you?

A. And the Inspection Department and payroll audit.

Q. You mean their general production department?

A. They call it field supervision expense. I think that is the designation that they give to it.

Q. There are very few insurance agents as distinguished from brokers in New York, aren't there?

A. Brokers are greatly in the majority. There are a large number of agents in New York.

Q. In casualty lines?

A. Yes.

Q. How about in fire lines?

A. Fire also.

Q. It is very small in proportion to the number of brokers?

A. Yes, numerically it would be small but there are very large and important agencies here in the city.

Q. Are they general agents usually?

A. General agents or what they term Borough agents.

Q. What is a Borough agent?

A. I don't know whether I can give you a proper definition. I would say the difference between a Borough agent and a general agent is that the general agent reports to the Home Office of the company and a Borough agent usually [fol. 1337] reports to a New York Branch Office of the company. In other words, a Borough agent is a supplement to the efforts of the Branch Office in producing business.

Q. They both do the same type of work, don't they?

A. Yes, they both try to produce business from brokers and local agents.

Q. Aren't there a very small number of these local agents as distinguished from general agents and Borough agents?

A. In greater New York proper that is true as to casualty. There are very few. They are mostly up in the Bronx and out on Long Island.

Q. Practically none in the fire business, are there?

A. I can't answer that. I don't know much about the production of fire business. I have never been in that end of it.

Q. The field supervision you speak of is supposed to be supervising the company's agents?

A. It is supervising all avenues of business, whether it be the agent's business or the Branch Office or broker's business.

Q. They don't supervise the broker, do they?

A. They have to deal with the broker on the writing of the insurance and get the contract written the way the broker feels it should be written and see that it has all the essential elements of coverage and that the rates are proper. They handle the negotiations with the broker or the local agent in the arranging of the insurance.

Q. Do these Branch Offices do the underwriting also, generally speaking?

A. Yes.

Q. Do they compile these competitive prices that are made on these large blanket policies or is that usually sent to the Home Office?

[fol. 1338] A. It is usually sent to the Home Office. Most Branch Offices are not autonomous. They don't have complete authority to put the company on oral risks. They have to consult with their head office on any large undertaking.

Q. When your client has a claim in another State do you frequently go there or not?

A. No, not unless there is something so unusual about the claim that our presence can be helpful in any way. Ordinarily there wouldn't be any occasion for us to go to the scene of the accident or to the city in which it occurred.

Q. Do you recall having been to any at all recently?

A. No, I haven't. We have a loss department and I do know that they go out and examine buildings that have been destroyed or partly destroyed by fire and go to see assureds who are involved in accidents in other States, if there is any necessity for it. I know there have been occasions when we have done it.

Q. You say that is very rare?

A. Yes, it would be rare except in the case of fire. In a fire loss we invariably have to have our man present to go over it with the adjuster and make sure that the settlement is reasonable and fair.

Q. Do you have an engineer in your office?

A. Not as such. I don't have anyone with that designation. I have had inspection and engineering experience on the lines that I handle and our fire man has had that experience, but we don't have anyone with the title of engineer and we don't maintain what you would call an Engineering Department. Some brokerage houses do. I presume you know that.

Q. What percentage of brokerage houses would you say [fol. 1339] do have an engineering department?

A. I would say it would be a very small percentage. It is limited to the very large brokerage houses who have so much fire business that they think they need a special department for that type of work.

Q. Is that work done mostly in the fire line?

A. Yes.

Q. Do you know of any distinction between the casualty and surety business and the fire insurance business that would make it any more reasonable in the one case or the other for a local agent to receive a part of the commission on business covering in his territory?

A. Certainly not on casualty or surety. I don't know that I am in position to answer on fire. I don't know whether there is something special that they could do on a fire line that we couldn't do here, but I know that isn't so as to surety business or casualty business.

Q. And you don't know any reason why it should be so in the fire business, do you?

A. I can't think of any, though I am not an expert. I am not qualified to answer that.

Q. You can't make any distinction yourself, so far as your experience in the agency business is concerned?

A. No, I can't.

Redirect examination.

By Mr. Christian:

Q. If several programs should be submitted by several brokers at the same time to a prospective assured, do those programs for proposed casualty contracts vary according to the judgment of the various brokers as to the various amounts and kinds of coverage?

[fol. 1340] A. Generally speaking, they would only differ in the premium quotation, though that isn't all. There are times when a broker will think he can arrange broader form of coverage than the assured has heretofore had or has specified in his request for quotation. He will recommend that broader form or a new form of protection. He may recommend changes in the limits. Whereas the request for quotation is for limits of $25,000 and $50,000 and $5,000 property damage, he may feel that they ought to have $100,000 and $300,000 and that they ought to have a $20,000 property damage limit. Brokers have different judgments as to what limits are adequate under the different conditions and some will recommend a different form of contract.

Q. Does the insured invariably take that contract with the quotation of the cheapest total price or does he sometimes take another contract that will cost him more because he likes the kinds of coverage suggested and the amounts of coverage contained in it?

A. They frequently take a form that costs more money because they think the coverage is better. It may be that they have a preference for a particular company or a particular broker and have more confidence in their ability to carry out the terms of the contract.

Q. I got the impression on your cross-examination that you rather acquiesced in the general statement that when there were competing brokers it was a matter of price.

A. All things being equal, I think that is so, but they are not always equal and there are times when they don't take the lowest price. If there are no other outside factors to consider, the price would be the determining factor.

[fol. 1341] OFFER IN EVIDENCE

Note: The Notary received from Mr. T. T. Moore on March 22, 1939, a paper containing certain requested information, and the following is a copy thereof:

Information Requested by Mr. Andrew Christian, Attorney for the Plaintiff, in the Case of Wm. H. Osborn, et al. v. Thos. W. Ozlin, et al., etc., of T. T. Moore When Depositions in This Case Were Taken.

The information relating to resident agents, solicitors, special agents and agency licenses requested is as follows:

Resident Agents

No. of persons holding resident agents' licenses	4,200
No. of licenses held by resident agents	15,397
No. of licenses held for U. S. stock fire companies	6,856
No. of licenses held for alien stock fire companies	1,376
No. of licenses held for U. S. mutual fire companies	904
No. of licenses held for domestic stock fire companies	311
No. of licenses held for domestic mutual fire companies	56
No. of licenses held for U. S. stock casualty companies	4,019
No. of licenses held for alien stock casualty companies	187
No. of licenses held for U. S. mutual casualty companies	1,097
No. of licenses held for domestic stock casualty companies	58

No. of licenses held for domestic mutual casualty companies 533

Solicitors

No. of persons holding solicitors' licenses 362
No. of licenses held by solicitors 1,126
No. of licenses held for U. S. stock fire companies 589
[fol. 1342] No. of licenses held for alien stock fire companies 102
No. of licenses held for U. S. mutual fire companies 36
No. of licenses held for domestic stock fire companies 40
No. of licenses held for domestic mutual fire companies 6
No. of licenses held for U. S. stock casualty companies 287
No. of licenses held for alien stock casualty companies 21
No. of licenses held for U. S. mutual casualty companies 30
No. of licenses held for domestic stock casualty companies 1
No. of licenses held for domestic mutual casualty companies 14

Special Agents

No. of persons holding special agents' licenses 210
No. of licenses held by special agents 557
No. of licenses held for U. S. stock fire companies 337
No. of licenses held for alien stock fire companies 50
No. of licenses held for U. S. mutual fire companies 32
No. of licenses held for domestic stock fire companies 4
No. of licenses held for domestic mutual fire companies 2
No. of licenses held for U. S. stock casualty companies 98
No. of licenses held for alien stock casualty companies 1
No. of licenses held for U. S. mutual casualty companies 23
No. of licenses held for domestic stock casualty companies 2
No. of licenses held for domestic mutual casualty companies 8

Resident Agency

No. of firms or corporations holding resident agency licenses	593
No. of licenses held by resident agencies	4,289
No. of licenses held for U. S. stock fire companies	2,444
[fol. 1343] No. of licenses held for alien stock fire companies	511
No. of licenses held for U. S. mutual fire companies	137
No. of licenses held for domestic stock fire companies	111
No. of licenses held for domestic mutual fire companies	1
No. of licenses held for U. S. stock casualty companies	942
No. of licenses held for alien stock casualty companies	58
No. of licenses held for U. S. mutual casualty companies	51
No. of licenses held for domestic stock casualty companies	15
No. of licenses held for domestic mutual casualty companies	19

The information herewith submitted is taken from our records as of March 7, 1939, and does not take into consideration any changes since that time.

The other information is given in question and answer form, the questions referred to beginning on page 1040 of the record. In these questions the term "taxable premiums" is used throughout and this has been interpreted to mean net premiums received in Virginia, that is gross premiums less returns, less reinsurance.

1. How much of the $9,830,634 of premiums, other than fire, life, title and ocean marine premiums, is non-cancellable accident and health insurance?

When the figure of $9,830,634 was originally used, I believe it was stated that this represented Virginia net casualty premiums received by stock casualty companies and it is so shown on the tabulation from which I was testifying. However, after careful investigation, we find that this figure includes premiums received by four companies which I believe should be more correctly classified as mutual companies. After making an adjustment for these four companies, this figure becomes $9,511,138. Of

[fol. 1344] this amount ($9,511,138) $367,305 represented non-cancellable accident and health premiums.

2. How many casualty and surety companies were authorized to write either accident and health or non-cancellable accident and health insurance, or both, in Virginia in 1937?

Sixty-nine companies were authorized to write either accident and health or non-cancellable accident and health insurance, or both, in Virginia in 1937.

3. How many of these sixty-nine companies were domestic, how many foreign, or alien, how many stock and how many mutuals?

The requested tabulation of these companies is as follows:

Domestic	2
Foreign or alien	67
Stock	59
Mutual	10

4. Give a figure comparable to the $9,511,138 mentioned above as representing net Virginia casualty premiums for the year 1937 for mutual companies and divide this figure into domestic and foreign or alien.

The total net Virginia casualty premiums received by mutual companies in 1937 amounted to $3,362,140. Of this amount $160,899 was received by domestic companies and $3,201,241 by foreign or alien companies.

5. Which companies licensed to conduct casualty and surety business had no casualty premiums except non-cancellable accident and health premiums? Give names of companies and amounts of net premiums.

Continental Assurance Company	$1,109
Paul Revere Life Insurance Company	39,247
North America Assurance Society	3,219
Total	$43,575

6. Give the names of the companies whose casualty busi-
[fol. 1345] ness is limited to accident, health and non-cancellable accident and health business with the amount of Virginia net premiums for each.

This list includes both stock and mutual companies.

Stock	Amt. of Premiums
Connecticut General Life Insurance Company	$44,352.00
Continental Assurance Company	1,109.00
Federal Life and Casualty Company	28,130.00
Illinois Bankers Life Assurance Company	309.00
Inter-Ocean Casualty Company	47,342.00
Life and Casualty Insurance Company of Tennessee	69,943.00
Massachusetts Protective Association	175,093.00
Monarch Life Insurance Company	28,726.00
National Life and Accident Insurance Company	3,611.00
North American Accident Insurance Company	37,854.00
Pacific Mutual Life Insurance Company	159,068.00
Paul Revere Life Insurance Company	39,247.00
Provident Life and Accident Insurance Company	479,692.00
Reliance Life Insurance Company	30,509.00
State Farm Life Insurance Company	903.00
Washington National Insurance Company	77,951.00
Mutual	
Benefit Association of Railway Employees	44,131.00
Mutual Benefit Health and Accident Association	151,830.00
Virginia Health and Accident Association	8,963.00
Equitable Life Assurance Society of the U. S.	127,066.00
Metropolitan Life Insurance Company	157,981.00
North America Assurance Society	3,219.00
[fol. 1346] Prudential Insurance Company	31,250.00

7. Give the amount of Virginia net casualty premiums returned by the following companies:

	Amt. of Premiums
Travelers Insurance Company	$1,036,951.00
Travelers Indemnity Company	231,734.00
Fidelity and Casualty Company of New York	486,603.00
Aetna Casualty and Surety Company	464,564.00
United States Fidelity and Guaranty Company	588,557.00
Maryland Casualty Company	539,236.00
Employers' Liability Assurance Corporation Ltd.	357,474.00
New Amsterdam Casualty Company	268,100.00
Century Indemnity Company	153,073.00

8. Mr. Christian also requests a breakdown of a figure of $10,368,780 which represents premiums returned by stock fire insurance companies in Virginia for the year 1936.

Inasmuch as the figures given relating to casualty companies are for the year 1937, I assume that the information requested relating to fire insurance companies should also be for the year 1937. The total net premiums received in Virginia, as reported to us by all fire insurance companies, covering all lines of business done by these companies for the year 1937 amounted to $12,149,425. This figure includes stock, mutual and reciprocal companies. The breakdown of this figure by classes of companies is as follows:

Stock	$10,617,644.00
Mutual	1,398,365.00
Reciprocal	133,414.00

[fol. 1347] Of this amount of total net premiums received (12,149,425.00) $8,391,638.00 represents net Virginia premiums received for fire business only. The breakdown of this latter figure by classes of companies is as follows:

Stock	$7,119,144.00
Mutual	1,144,085.00
Reciprocal	132,028.00

The breakdown of the figure of $8,391,658.00 between domestic and foreign or alien companies by classes of companies is as follows:

	Domestic	Foreign
Stock	$248,113.00	$6,871,031.00
Mutual		1,140,485.00
Reciprocal		132,028.00

No domestic mutual companies such as the Mutual Assurance Society of Virginia and county mutual fire insurance companies were included in the above figures.

You will note that the questions quoted above are not quoted exactly from the record but wherever possible these questions have been consolidated and simplified.

[fol. 1348] IN UNITED STATES DISTRICT COURT

LETTER FROM ATTORNEY FOR DEFENDANTS ACCEPTING STATEMENT OF EVIDENCE AS SUBMITTED

Filed December 1, 1939.

December 1, 1939

The Clerk of the United States District Court
Eastern District of Virginia
Post Office Building,
Richmond, Virginia

Re: Osborn, et als., v. Ozlin, et als., etc.

DEAR SIR:

I accept the statement of evidence including exhibits filed in your office today by the Appellants in the above cause as correctly representing what it purports to represent, viz: a copy of a part of the transcript of the testimony, and a copy of a part of Exhibit 1, and copies of Exhibits 3-C, 4, 5, 6, 7, 39, 40, A, C, and D.

This is to inform you that the Appellees desire no other portions of the testimony and no other exhibits, or parts thereof, to be included in the record, and agree that you may immediately forward the transcript of the record in this cause to the Supreme Court, (to consist only of the matter designated in the praecipe, including the above mentioned statement of evidence including exhibits), the Appellees hereby waiving their right to file with you within ten days from this date a designation of additional portions of the record desired to be included in such transcript.

Very truly yours, (Sgd.) Abram P. Staples, Attorney General of Virginia and, as such, Attorney for Appellees.

[fol. 1349] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL

Filed December 1, 1939

TO THE CLERK:

You will please make a transcript of record to be filed in the United States Supreme Court pursuant to an appeal

allowed in the above entitled cause and appellants hereby designate for inclusion in such transcript of record the following pleadings, papers, documents and exhibits and no others to wit:

1) The Complaint.

2) Order entered December 5, 1939, convening a Specially Constituted District Court and restraining enforcement of the statute.

3) Answer of defendants.

4) Letter dated January 5, 1939 from Morris A. Soper, C. J., to Robert N. Pollard, D. J., stating testimony shall be taken by deposition.

5) Order entered January 10, 1939 continuing the restraining order.

6) Opinion of the Court filed September 6, 1939. (The opinion is to be printed as a part of Item No. 14 herein. The opinion of the court contained no numbers opposite separate paragraphs of the opinion as set forth in Item No. 14.)

7) Motion of plaintiffs filed October 2, 1939, for new trial of issues raised by application for interlocutory injunction or for rehearing of said application, for amendment of opinion filed September 6, 1939 and Findings and Conclusions therein, and for additional Findings and Conclusions.

8) Motion of plaintiffs filed October 2, 1939 for the granting of an injunction during the pendency of appeal.

[fol. 1350] 9) Order entered October 6, 1939 denying motion of plaintiffs for a new trial, etc. (Item No. 7 herein).

10) Final decree dismissing complaint enetered October 6, 1939.

11) Order entered October 11, 1939 restraining enforcement of statute pending appeal to the Supreme Court.

12) Notice of Appeal and acknowledgment of service on appellees on November 3, 1939—filed on same date.

13) Petition for Appeal filed November 3, 1939.

14) Jurisdictional Statement together with Exhibits attached, filed November 3, 1939.

15) Assignment of Errors filed November 3, 1939.

16) Order allowing Appeal entered November 3, 1939.

17) Citation filed November 3, 1939 including acceptance of service by appellees on same date.

18) Appeal bond filed November 3, 1939.

19) Notice of paragraph 3 of Rule 12 of the Rules of the Supreme Court, and acknowledgment of service on Novem-

ber 3, 1939 on appellees of copies of the Petition for Appeal, order allowing Appeal, Assignment of Errors, Jurisdictional Statement and of Notice of paragraph 3 of Rule 12 of the Rules of the Supreme Court—filed November 3, 1939.

20) Stipulation of Facts dated January 12, 1939.

21) Order entered January 18, 1939 filing Stipulation of Facts.

22) Statement of Evidence and Exhibits designated by appellants for inclusion in transcript, filed herewith, December 1, 1939, and order approving same.

23) Letter dated December 1, 1939 from Abram P. Staples, Attorney General of Virginia and, as such, attorney for appellees, to the Clerk of the United States District Court, Eastern District of Virginia.

24) This Praecipe and acknowledgment of service of a copy thereof.

[fol. 1351] 25) Certificate of the Clerk.

Said Transcript to be prepared as required by law and the Rules of this Court and of the Supreme Court of the United States and to be filed in the office of the Clerk of the Supreme Court on or before the 13th day of December, 1939.

Dated December 1, 1939.

(Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, N. Y. (Sgd.) Andrew D. Christian, Mutual Building, Richmond, Va., Attorneys for Appellants.

Service of a copy of the foregoing Praecipe including a copy of the Statement of Evidence and Exhibits referred to in Item 22 thereof is hereby admitted and acknowledged this 1st day of December, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia and, as such, Attorney for Appellees.

[fol. 1352] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1353] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed December 21, 1939

Now Come the above named appellants pursuant to Paragraph 9 of Rule 13 of the rules of this Court and state that the points upon which they intend to rely in this Court in this case are as follows:

Point I

Section 4222 of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that its enforcement will deprive the appellants of their property without due process of law.

Point II

Section 4222 of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that [fol. 1354] its enforcement will deprive the appellants Osborn, MacNeil and Adair of the equal protection of the laws.

Point III

Section 4226 (a) of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that its enforcement will deprive the appellants of their property without due process of law.

Point IV

Section 4226 (a) of the Code of Virginia is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the provisions of said Section 4226 (a) are arbitrary and enforcement of said statute will deprive the appellants of their property without due process of law.

Point V

As further points to be relied upon, the appellants adopt their assignments of error.

The appellants further represent that the whole of the record as filed is necessary for the consideration of this case.

John Lord O'Brian, 37 Church Street, Buffalo, New York, Andrew D. Christian, 907 E. Main Street, Richmond, Virginia, Attorneys for Appellants.

[fol. 1355] Due and personal service of the foregoing statement and designation is hereby admitted this 20th day of December, 1939.

Abram P. Staples, Attorney for Appellees.

[fol. 1356] [File endorsement omitted.]

Endorsed on cover: File No. 43,999. E. Virginia, D. C. U. S., Term No. 592. William H. Osborn, Channing F. MacNeil, Lewis C. Adair, et al., Appellants, vs. Thos. W. Ozlin, William Meade Fletcher and Lester Hooker, etc., et al. Filed December 15, 1939. Term No. 592, O. T., 1939.